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# Thirty-first progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire

## I. Introduction

1. The present report is submitted pursuant to resolution 2062 (2012) of 26 July 2012, by which the Security Council extended the mandate of the United Nations Operation in Côte d'Ivoire (UNOCI) until 31 July 2013 and requested me to provide a mid-term report no later than 31 December 2012 on the situation on the ground and the implementation of that resolution. The report covers major developments since my report of 29 June 2012 (S/2012/506).

## II. Security situation

2. The security situation has remained fragile since my last report and, as conveyed in my letter to the President of the Security Council of 16 October (S/2012/772), deteriorated between August and October. Of particular concern were the attacks targeting national security forces in and around Abidjan and along the borders with Ghana and Liberia, aimed at destabilizing President Alassane Dramane Ouattara's Government. Those attacks marked an important change in the security dynamic. They were reportedly planned, financed and, to a certain extent, carried out by networks and individuals affiliated with members of the former Government of President Gbagbo inside and outside Côte d'Ivoire, some of whom reportedly were recruited, trained and armed in Liberia. Over 60 individuals were killed and many more wounded, including civilians, while thousands were temporarily displaced, and weapons and ammunition were taken by the assailants. The attacks further increased mistrust and deepened divisions in the country, in particular between the ruling party and the political opposition. There were also some incidents targeting supporters of former President Gbagbo.

3. In a serious incident, an armed robbery on 20 July in Duékoué during which five persons were killed prompted a large group of youths and dozos (traditional hunters) to attack the Nahibly camp for internally displaced persons, which was believed to host some of the robbers. The group, some of whom were armed with sticks and machetes, forcefully entered and set fire to the camp, which had hosted up to 5,000 persons, including many supporters of former President Gbagbo. Eleven people were killed and 56 injured, and the camp was destroyed. The national security forces responded to the incident, while UNOCI coordinated humanitarian

response efforts and launched initiatives to ease tensions. The Government and UNOCI are conducting separate investigations.

4. The majority of the attacks targeting national security forces were reported in and around Abidjan in south-eastern Côte d'Ivoire. Three incidents on 5 August marked the beginning of a series of violent attacks with assailants stealing weapons and equipment. In Abidjan, armed individuals opened fire on a Forces républicaines de Côte d'Ivoire (FRCI) checkpoint as well as a police post in the Yopougon neighbourhood, killing five and wounding several Ivorian security forces. During a third incident in Abengourou, a group of civilians attempted to enter an FRCI camp, disarming the sentry guard before they were repelled by FRCI members from within the camp.

5. The most significant attack took place on 6 August, when an armed group attacked the FRCI Akouédo camp in Abidjan, broke into the armory, and stole a significant number of weapons and ammunition, while others started firing at the barracks. The assailants reportedly enjoyed some support from within the camp. Five FRCI soldiers and one attacker were killed, while 18 persons were wounded. A large number of FRCI soldiers sought temporary refuge in the adjacent UNOCI camp. Six assailants were later captured by FRCI.

6. Other attacks against national security forces took place, including on 8 August, when one FRCI member and one assailant were seriously wounded during an attack on an FRCI checkpoint in Agboville. On 15 August, armed individuals simultaneously attacked an FRCI checkpoint, a gendarmerie post and the local prison in Dabou. Three civilians were killed and one FRCI member was wounded, while 120 detainees were freed, of which 31 were later recaptured. Further attacks were reported on 25 August near Irobo, during which one civilian, one FRCI soldier and two assailants were killed, and on 20 September in Abidjan, when one FRCI soldier was killed during an attack on three police and gendarmerie posts.

7. A further cross-border attack from Liberia was reported on 13 August when a group of armed individuals attacked a border post in Pehekan Houebli in western Côte d'Ivoire, during which one assailant was killed and three FRCI members wounded. The assailants seized weapons and temporarily took over the post, while some FRCI soldiers sought refuge on the Liberian side of the border. On 14 August, three FRCI soldiers were wounded during an attack on an FRCI checkpoint in Bakoubli near Toulépleu.

8. On 20 September, the first cross-border incident at the border with Ghana was reported in Noé. Armed assailants who had crossed the border by boat attacked an FRCI post. Eight of the assailants were killed and 14 suspects were later apprehended, while others reportedly fled to Ghana. In response to the attack, the Ivorian Government temporarily closed its air, land and maritime borders with Ghana. On 14 October, one assailant was killed and three FRCI members were wounded during separate attacks on police and FRCI posts in Bonoua.

9. While no major attacks were reported in November, on 16 December, during an attack on an FRCI post in Agboville, two FRCI members were killed and one civilian seriously wounded. In two separate incidents on 21 December, a civilian in custody was killed when a gendarmerie station was attacked in Abidjan, and two FRCI members were wounded during an attack on an FRCI post in Agbaou.

10. There was also an attack against a key infrastructure facility in Abidjan on 15 October. A group of some 50 armed individuals forced their way into the Azito thermal power plant, inflicting damage on one turbine and two water reservoirs. The national security forces subsequently arrested nine suspects, all serving members of the army, police and gendarmerie.

11. While the majority of attacks targeted Government sites, on 18 August, amid rising tensions in Abidjan, a group of unidentified individuals attacked the headquarters of the former ruling Front populaire ivoirien (FPI), injuring two FPI supporters and damaging property. On 19 August, an affiliated printing house in Abidjan, Cyclone, was ransacked and burned down by unknown individuals.

12. In response to the attacks, national security forces established a number of checkpoints and reinforced their presence in and around Abidjan and along the border with Ghana. During numerous search operations, over 500 individuals, including key opposition figures, were arrested, raising concerns about the heavy-handedness of FRCI, with many of the arrests not conforming to legal procedures.

13. A significant number of confrontations took place between communities, often revolving around land tenure issues opposing mostly so-called native and non-native communities, particularly in western and northern Côte d'Ivoire. Such incidents resulted in the death of at least 13 persons, while 55 were injured. Property was also damaged or destroyed. Many of the incidents involved FRCI soldiers or dozos, who in some instances were reported to have used deadly force to resolve such disputes.

14. The period under review also witnessed 11 prison breakouts in which a total of 137 detainees escaped from prisons across the country, including during the attack mentioned in paragraph 6 above. UNOCI also reported an increase in armed robberies throughout the country, particularly in Abidjan and along the main axis in the northern part of the country.

15. Explosive remnants of war as well as unsecured weapons and ammunition continued to pose a threat to civilians. UNOCI assisted the Government by conducting assessments of 60 ammunition storage facilities and armories, refurbishing 49. UNOCI also assisted in destroying 12,933 kg of unsafe and expired ammunition and destroyed 842 stockpiled landmines in compliance with the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. The Mission also provided specialized training to FRCI on clearing explosive remnants of war and on stockpile management.

## III. Political developments

16. In the light of the spate of attacks targeting national security forces, the Government focused its attention on security issues. On 8 August, President Ouattara created the National Security Council to serve as his principal forum for considering national security and policy matters. It comprises 18 members, including the Prime Minister, the Ministers for Foreign Affairs, Interior, Finance and Justice, the Chief of Defense Staff, the Gendarmerie Commander and the Director of the National Police. On 28 August, President Ouattara chaired the first meeting of the National Security Council, approving additional resources for the national security forces. Since its establishment, the National Security Council has met regularly to

address security matters as well as security sector reform and disarmament, demobilization and reintegration.

17. The Government asked Liberia to extradite three individuals who had been arrested in Liberia in connection with the killing of the seven UNOCI peacekeepers in June 2012. In addition, initial steps were taken to address land tenure issues, including through the holding of an inter-ministerial seminar on 5 October. Meanwhile, three former Forces nouvelles commanders, Tuo Fozie, Kone Messamba and Ousmane Coulibaly (aka Ben Laden), were appointed as prefects in Bouna, Guiglo and San Pedro, respectively, on 26 September.

18. As mentioned above, the attacks, reportedly carried out to a certain extent by individuals and networks affiliated with members of the former Government of President Gbagbo, further increased mistrust and deepened divisions between the ruling coalition and the political opposition. This hampered progress in political dialogue and national reconciliation in spite of calls for political dialogue from opposition members, efforts by the Government to reach out to pro-Gbagbo groups and the enhanced involvement of the Dialogue, Truth and Reconciliation Commission. The Chair of the Commission, former Prime Minister Charles Konan Banny, held consultations with political parties, including the former ruling party, representatives of civil society, traditional and religious leaders, and non-governmental organizations.

19. Meanwhile, my Special Representative intensified his efforts to facilitate such dialogue between the Government and the political opposition, including through meetings with key stakeholders, political parties, youth groups and traditional and religious leaders. The former ruling FPI party chose not to participate in the second meeting of the cadre permanent de dialogue convened by the Prime Minister on 25 October, which was attended by other political opposition parties, to discuss issues of concern, including security and elections. On 13 December, President Macky Sall of Senegal received an FPI delegation in Dakar. They reportedly discussed ways to reduce tensions between the Government and the political opposition and their participation in the local elections. On 20 December, the Government announced that nine detainees affiliated with former President Gbagbo would be released on bail, including the Prime Minister of his post-elections government and a militia leader from western Côte d'Ivoire.

20. Inflammatory language was used by private media, resulting in an unprecedented temporary suspension by the National Press Council of all opposition newspapers from 12 to 17 September, which raised concern about the freedom of expression. My Special Representative used his good offices and advocated for the freedom of expression as well as for the observance of the law governing the media, which contributed to the lifting of the suspension. The attacks on the FPI headquarters and an affiliated printing house mentioned in paragraph 10 above and the looting of the residence of an FPI official, coupled with the arrests of many members of the political opposition, including the FPI interim Secretary-General and his deputy, raised security concerns among members of the political opposition. Since August, UNOCI has received at least 13 requests from political opposition representatives for protection, which are being discussed with the Government.

21. Tensions were also reported within the ruling Rassemblement des houphouëtistes pour la démocratie et la paix (RHDP) coalition between President Ouattara's Rassemblement des républicains (RDR) party and former President Henri

Konan Bédié's Parti démocratique de Côte d'Ivoire. On 14 November, President Ouattara dissolved the Government, reportedly following a disagreement within RHDP over a bill to amend the law on marriage that was under discussion in the National Assembly. On 21 November, he appointed the Minister for Foreign Affairs, Daniel Kablan Duncan of PDCI, as Prime Minister, followed by the appointment on 22 November of a new cabinet comprising 29 members, a reduction from the previous number of 40, with four new ministers.

22. The Government received the final report of the National Commission of Inquiry, which was established in July 2011 to conduct non-judicial investigations into violations of human rights and international humanitarian law committed during the post-elections crisis. The report identifies armed groups loyal to both President Ouattara and former President Gbagbo as perpetrators of serious human rights violations, including summary executions. According to the Commission, a total of 3,248 persons were killed, including 1,452 by forces loyal to the former President, 727 by FRCI and 200 by dozos. The Commission also documented 1,009 cases of arbitrary execution, torture and forced disappearance. President Ouattara instructed the Prime Minister to take the necessary measures to ensure the implementation of the recommendations of the Commission. My Special Representative has stepped up his engagement with Ivorian authorities in this regard, raising human rights concerns and the need for due process and equitable justice.

23. On 11 October, the military tribunal in Abidjan convicted four former Forces de défense et de sécurité officers, most prominently former Republican Guard commander General Brunot Dogbo Blé and Simone Gbagbo's aide de camp, Captain Anselme Seka Yapo, for crimes committed during the post-elections crisis, including kidnapping and murder. The Government has sought the extradition of former President Gbagbo's spokesperson, Justin Katinan Koné, to face trial in Côte d'Ivoire for economic crimes committed during the crisis. He was arrested in Ghana on 24 August, released on bail on 25 September and re-arrested two days later before he was released on bail again on 24 October. His extradition hearing is pending.

24. With regard to international proceedings, the International Criminal Court ruled on 2 November that former President Gbagbo was fit to stand trial for the charges levelled against him. On 11 December, the Court announced that the hearing to confirm the charges against former President Gbagbo has been scheduled for February 2013. On 22 November, the Court unsealed an arrest warrant, issued on 29 February, against former First Lady Simone Gbagbo. According to the arrest warrant, she is responsible for the crimes against humanity of murder, rape and other forms of sexual violence, other inhumane acts and persecution reportedly committed in Côte d'Ivoire during the post-elections crisis.

25. On 26 September, the Government announced that local elections would take place in February 2013, using the existing voters list. Residual legislative elections in six electoral districts were also scheduled for February 2013. Meanwhile, the electoral violence in the districts of Bonon and Facobly is being investigated by the Government.

### Regional developments

26. As the Chair of the Authority of Heads of State and Government of the Economic Community of West African States (ECOWAS), President Ouattara played an active role in responding to the crises in Mali and Guinea-Bissau following the unconstitutional changes of government in those countries on 22 March and 12 April, respectively. He also continued to take steps to address subregional threats, including organized crime.

27. Cooperation between the Governments of Côte d'Ivoire and Liberia further increased, including at the highest level, to address common border security challenges. Following a meeting with the Liberian National Security Adviser on 2 August, President Ouattara met President Ellen Johnson Sirleaf of Liberia on 18 October in Abidjan, where they agreed on joint Ivorian and Liberian military operations on their common border. UNOCI and the United Nations Mission in Liberia (UNMIL) continued to develop inter-mission cooperation, including through enhanced information-sharing and regular meetings. UNOCI and UNMIL are also developing a cross-border communication strategy aimed at encouraging Ivorians living in Liberia to return to Côte d'Ivoire.

28. High-level contacts also took place with Ghana, where many Ivorians reside, including representatives of the former regime as well as 9,300 Ivorian refugees. Following reports of the involvement of Ivorians in Ghana in attacks in Côte d'Ivoire, President John Dramani Mahama of Ghana publicly emphasized during his visit to Abidjan on 5 September that his country would not be used as a platform to destabilize Côte d'Ivoire. I used my good offices to facilitate contacts, while my Special Representative visited Ghana from 2 to 4 October where he met Ivorians and encouraged refugees to return to Côte d'Ivoire.

## IV. Reform of security and rule of law institutions

29. Since my last report, the Government has made progress in advancing its security sector reform agenda. With support from UNOCI, the inter-ministerial working group finalized the national strategy for security sector reform, which was validated by the National Security Council in September. The strategy, which has not yet been disseminated, outlines the Government's vision for national security and identifies urgent and long-term priorities for the reform of the security sector.

30. The development of this strategy is an important step forward, as it articulates a vision for reform that moves beyond restoring security institutions to their pre-crisis capacities and towards a transformation of the security sector based on the country's needs. As a next step, the Government will have to translate the strategy into a concrete action plan to address short- and longer-term challenges and to cost envisaged activities.

31. UNOCI is supporting the Government by providing expert advice on security sector reform. The Mission also meets on a weekly basis with international partners to exchange information and enhance coordination and harmonization of efforts. In addition, the Mission also assisted with the preparation of a communication and sensitization plan to enhance public awareness with regard to the national security sector reform strategy. Finally, UNOCI is supporting the Government, with the participation of representatives of the National Assembly and civil society, to learn

lessons from the security sector reform experiences of neighbouring countries. On 1 August, France and Côte d'Ivoire signed four military cooperation agreements totalling 2.3 million euros with a focus on training and security sector reform.

### Justice and corrections

32. All 37 courts across the country are fully functional and operating at full capacity, and a new courthouse was opened in Guiglo. The inspection of judicial and corrections services has resumed following the nomination in August of an Inspector General. On 17 October, the Government announced that disciplinary proceedings had been initiated against eight judges for abuse of power, extortion of funds and corruption. The implementation of the national justice sector reform strategy is under way, and UNOCI is providing technical capacity-building advice.

33. As of 18 December, 7,580 detainees were held in 32 prisons. The Government conducted an assessment of the prison security situation with UNOCI's support and is developing strategies to prevent jail breaks. The Mission is co-locating UNOCI corrections officers in 32 prisons and providing training support to the Government. In addition, the implementation of the national justice sector reform strategy is under way, with support from the European Union through a $18 million project, of which $4 million were disbursed on 19 July.

## V. Disarmament, demobilization and reintegration

34. Progress was achieved with the disarmament, demobilization and reintegration of former combatants. On 2 August, the Government approved a national policy on disarmament, demobilization and reintegration, which provides for the establishment of a single Authority for Disarmament, Demobilization and Reintegration. President Ouattara appointed my former Deputy Special Representative for the Democratic Republic of the Congo, Fidèle Sarassoro, to head the Authority. He assumed office on 1 October.

35. The national disarmament, demobilization and reintegration policy, which was developed with UNOCI support, foresees that all individuals over 18 years of age who had participated in the fighting in 2002 and/or the post-elections crisis would undergo disarmament, demobilization and reintegration, with an overall caseload estimated at 100,000 former combatants. The policy provides a broad outline of the process and identifies target groups and general eligibility criteria for the respective groups, which will be specified in an implementation strategy currently under development. The policy commits the Government to update the existing database to ensure that the list of former combatants is inclusive, credible and transparent.

36. The Authority for Disarmament, Demobilization and Reintegration developed a pilot programme for an initial caseload of 5,000 former combatants to be processed at the Anyama demobilization site in Abidjan. The operation targeted mainly elements associated with FRCI who had fought on the side of President Ouattara during the post-elections crisis. A total of 2,000 of those 5,000 former combatants will be integrated into the Government's penitentiary system, while others will be considered for placement in the customs, water and forestry services, as well as in private security companies. As of 18 December, 1,194 former combatants, including 63 women, have been disarmed and demobilized, while 861 weapons have

been collected. Five hundred former combatants have been deployed to work in prisons, while 443 are being trained. The disarmament, demobilization and reintegration operations are planned to continue in other parts of the country. The two sites rehabilitated by UNOCI in Guiglo and Bouaké are ready for operations, and the remaining six, in San Pedro, Man, Séguéla, Korhogo, Bouna and Abengourou, are expected to be completed by mid-2013.

37. UNOCI is supporting the Authority for Disarmament, Demobilization and Reintegration in formulating an implementation strategy for the national policy referred to in paragraph 33, including by providing advice on planning medium- to long-term reinsertion and reintegration processes. UNOCI also continues to support the National Commission on Small Arms and Light Weapons, which has conducted nine ad hoc operations across the country to encourage the voluntary handover of weapons. During those operations, a total of 112 weapons and 6,323 rounds of ammunition were collected.

38. UNOCI and the United Nations country team are working with the Government and representatives of the private sector to initiate activities with regard to youth employment. According to a recent World Bank report, an estimated 60 per cent of the population between the ages of 15 and 35 is unemployed or underemployed.

## VI. Restoration of State authority

39. Local authorities, particularly prefects and local security committees, have played an important role in managing security-related issues affecting the population, often revolving around land tenure disputes. Early warning and sensitization committees have been created in most departments and sous-prefectures, although many still lack the means to become fully operational. UNOCI is supporting the local authorities, including by building the capacity of the corps préfectoral, in the management of public services and in conflict management and resolution, in conjunction with the Ministry of Interior. Through the Peacebuilding Fund, the United Nations continued to support the basic rehabilitation and equipping of prefectures, police and gendarmerie offices.

40. Fiscal administration has been largely restored throughout the country, and customs offices have opened in many locations in northern and western Côte d'Ivoire. However, there is still a limited presence of customs officers along the border with Liberia where FRCI continue to occupy some customs facilities. FRCI elements have also been observed accompanying mobile customs brigades. In spite of a lack of resources, which is hampering effectiveness, revenue is generally collected by the respective authorities, although incidents of racketeering continued.

## VII. Human rights

41. The human rights situation in the country remains of serious concern. UNOCI documented 57 killings, 72 cases of torture or ill treatment, 22 cases of extortion and racketeering and 382 cases of illegal arrest. Violations were committed by armed individuals, including FRCI elements and dozos, often provoking confrontation with local populations. Many violations reportedly took place during

search operations by the national security forces. Most importantly, on 14 August, FRCI soldiers burned a dozen houses during a search operation at Pehekan village, claiming that the population had aided the perpetrators of an attack on a nearby FRCI border post. Several supporters of the former ruling party were intimidated, arrested or prosecuted for their alleged involvement in threatening State security and in the post-elections violence. Some of the arrested persons were subjected to torture and other forms of ill treatment.

42. On 11 October, six bodies were exhumed from a mass grave in Duékoué in the vicinity of the Nahibly camp, which was attacked on 20 July (see para. 3 above). The local authorities have requested a forensic examination and are investigating the alleged involvement of two FRCI members in the killings. On 12 October, during his third visit to Côte d'Ivoire, the United Nations Independent Expert on the Human Rights Situation in Côte d'Ivoire urged the Government to fully investigate the incident and bring the perpetrators to justice. During his visit to Côte d'Ivoire in November, my Assistant Secretary-General for Human Rights urged the Government to bring perpetrators of serious human rights violations to justice and to take necessary measures to prevent and punish cases of arbitrary detention and torture.

43. The Council of Ministers adopted the law on the National Commission for Human Rights on 6 September. However, the text does not comply with the Paris principles related to the status and functioning of national institutions for the protection and promotion of human rights.

## Sexual violence

44. A worrying pattern of sexual violence was observed, in particular in the northern and western parts of the country, which prompted thousands of women in Duékoué to protest on 18 July against increasing sexual violence against women. Some 90 rapes, including over 20 gang rapes during armed robberies, were reported. Victims included minors as young as 3 years of age. While 19 alleged perpetrators of those crimes were arrested, rape continued to be punishable by a more lenient sentence of indecent assault, contributing to impunity. Moreover, the high cost of medical certificates (some $100) prevented many families from filing official complaints; some rape incidents were the subject of amicable settlements. UNOCI continued to prevent sexual violence through training activities, including with the national security forces. The Mission also distributed a number of cell phones through women's organizations to enable women in need to contact local authorities.

## Child protection

45. Impunity for perpetrators of grave violations against children, as well as lack of accountability and transparency in the administration of justice for children, remain issues of great concern. During the reporting period, 94 cases of grave violations were documented, including 60 cases of rape and sexual violence, five abductions, four occupations of schools, 23 killings and maiming by explosion of grenades and unexploded ordnance, and two cases of children used by dozos at checkpoints. UNOCI provided awareness-raising and capacity-building support to 2,197 personnel from the Government, national security forces and civil society organizations.

### Media

46. UNOCI continued its activities to build the capacity of the Ivorian media with the aim of strengthening their professional ethics and enhancing their responsibility in the coverage of political developments. ONUCI-FM continued to broadcast information about the situation in Côte d'Ivoire to the population across the country and to promote peace and reconciliation. A broadcasting agreement has been finalized with the national Radiodiffusion Télévision Ivoirienne for UNOCI programming.

## VIII. Humanitarian and economic situations

47. Although the majority of persons displaced during the post-elections crisis have returned home, up to 80,000 remain displaced. The continued perception of insecurity and ineffective restoration of State authority, including limited access to basic social services, hampered the sustainable return of internally displaced persons and refugees. The Special Rapporteur on the Human Rights of Internally Displaced Persons visited Côte d'Ivoire in July and found that internally displaced persons continued to live in difficult situations and that although the camps had been dismantled, their needs and those of their host communities remained urgent.

48. Humanitarian actors continued to assist affected populations mostly in western and northern Côte d'Ivoire. Out of the $160 million required to respond to the most urgent humanitarian needs for 2012 as per the Consolidated Appeal, 60 per cent were funded as of 18 December. A strategic framework is being prepared by the humanitarian community to address residual humanitarian needs in 2013, while progressively moving from an international humanitarian coordination structure towards government-led coordination.

49. Economic performance in Côte d'Ivoire has been strong. Economic activity rebounded more strongly than projected following the contraction resulting from the post-elections crisis and after reaching the completion point under the Enhanced Heavily Indebted Poor Countries Initiative in late June.

50. A delegation of the International Monetary Fund visited Côte d'Ivoire from 19 September to 3 October, noting progress in the implementation of structural reforms, many of which seek to strengthen public financial management and improve the business climate. It found that the growth outlook through 2013 was favourable, while the Government's investment plan is expected to stimulate and enhance private investment and maintain economic expansion. The delegation also noted that further reforms will be needed for substantial job creation, increased funding possibilities for pro-poor expenditures, and higher living standards more generally for the people of Côte d'Ivoire. Key priorities include: electricity sector reforms; banking reform; strengthened debt management to protect public finances; flexibility in fuel prices; a strategy for managing the wage bill; and efforts to improve the business climate more broadly.

51. The President of the World Bank visited Côte d'Ivoire on 5 September, followed by the visit of a technical mission from 23 September to 4 October to identify priorities for the implementation of the Bank's new strategy for State-building and peace consolidation. Priorities within this framework include support for land management, civil registration and reintegration of former combatants and youth. On 25 October, the President of the European Commission, Jose Manuel Barroso,

visited Abidjan to sign an agreement of budgetary support with the Government amounting to €115 million.

52. On 30 November, the International Monetary Fund completed its second review of Côte d'Ivoire's economic performance under the programme supported by the Extended Credit Facility, enabling the immediate disbursement of an amount equivalent to $100 million. This will bring total disbursements under the arrangement to $324 million to date.

53. During a meeting of the Consultative Group in Paris on 4 and 5 December, in which my Special Representative participated, donors pledged over $8 billion to fill the funding gap of Côte d'Ivoire's National Development Plan for the period of 2013-2015, exceeding the Government's expectations.

## IX. Safety and security of United Nations personnel

54. The fragile security situation, coupled with the high incidence of violent crime, posed security threats to United Nations personnel and installations. During the period under review, one assault, four incidents of house break-ins as well as seven incidents of robbery and carjacking targeting United Nations personnel were reported in Abidjan. The United Nations has taken measures to lower the risks associated with these threats, including through its security intervention team, which also comprises members of the national law enforcement agencies.

## X. Deployment of the United Nations Operation in Côte d'Ivoire

### Military component

55. The strength of the military component of UNOCI as of 18 December was 9,550 military personnel, including 9,275 troops, 178 military observers and 97 staff officers, against an authorized ceiling of 8,837 personnel. In the light of the deterioration of the security situation in Côte d'Ivoire as well as the evolving threats, I had recommended in my letter to the President of the Security Council dated 16 October (S/2012/772) to defer the reduction of the military strength of UNOCI by 955 personnel as reflected in the authorized strength in Security Council resolution 2062 (2012) until after the assessment to be conducted in early 2013. This assessment would, inter alia, develop recommendations on possible adjustments in the structure and strength of UNOCI based on the security situation and prevailing threats as well as benchmarks to measure and track progress towards the achievement of long-term stability in Côte d'Ivoire.

56. UNOCI reinforced its troop presence in western Côte d'Ivoire, including in Divo, Gagnoa and Tabou, in order to enhance the protection of civilians in areas of concern. Further camps are under construction in Grabo and Para at the border with Liberia as well as in Abengourou near the border with Ghana.

57. As part of inter-mission cooperation, fortnightly operations are being conducted by UNOCI and UNMIL. These entail coordinated patrols on both sides of the Ivorian-Liberian border followed by meetings at border posts, bringing together Ivorian and Liberian authorities as well as UNOCI and UNMIL personnel, to discuss the outcome of the patrols and exchange information. Pending the approval

of the troop-contributing country for the transfer of the three armed helicopters from UNMIL to UNOCI, they continued to operate from Liberia conducting aerial patrols and reconnaissance missions along and across the border in western Côte d'Ivoire, providing a deterrent effect against the cross-border movements of suspected armed elements.

58. UNOCI is also assisting the Government in providing static security at key installations in Abidjan and elsewhere in the country, and is conducting coordinated patrols with FRCI, the national police and the gendarmerie.

## Police component

59. As at 18 December, the strength of the police component of UNOCI stood at 1,490 personnel, including six formed police units with 996 personnel and 494 individual police officers, against an authorized ceiling of 1,555 personnel. Formed police units are deployed in Abidjan, Bouaké, Daloa, Guiglo, Tai and Yamoussoukro. Out of the 205 specialized police advisers authorized by the Security Council in resolution 2000 (2011), 184 have been deployed to UNOCI, while 21 are under recruitment.

60. UNOCI continued to contribute to strengthening the capacity of the national police and gendarmerie through co-location, mentoring activities, and the provision of advice in conducting investigations. Specialized training was provided on forensics, close protection, human rights, ethics, antiracketeering, gender-based violence and maintenance of public order. Through funding from the Peacebuilding Fund, UNOCI also provided training to 400 national police and gendarmerie personnel on community policing. With financial assistance from the European Union, UNOCI is implementing a pilot project aimed at enhancing the confidence of the population in the police as well as improving police ethics and professionalism.

61. In support of efforts to address subregional threats, UNOCI, the United Nations Office on Drugs and Crime and the United Nations Office for West Africa developed an action plan for the establishment of a transnational crime unit in Côte d'Ivoire. UNOCI also continued to support the Government in the implementation of the West Africa Coast Initiative, organizing three orientation sessions for national gendarmerie anti-drugs and detective officers as well as the national anti-racketeering unit.

## Civilian component

62. In close collaboration with the United Nations country team, and within existing resources and capacity, UNOCI strengthened its presence of civilian personnel in some field offices with a view to enhancing the Mission's mandate implementation at the local level, in particular with regard to the protection of civilians. Field offices co-locating UNOCI and the United Nations country team were established in Guiglo and Toulepleu in western Côte d'Ivoire. UNOCI and the United Nations country team also implemented a joint 90-day action plan, in close coordination with national partners, aimed at increasing mandate implementation in areas of concern.

# XI. Observations

63. Eighteen months after the violent post-elections crisis, I am encouraged by the relative progress that Côte d'Ivoire has made on a number of fronts. The country finds itself at a challenging, yet promising, juncture. In order for progress to be sustainable, crucial decisions will have to be made and implemented in the areas of security, reconciliation and political dialogue. The root causes of the recurrent violent crises in Côte d Ivoire will also have to be addressed, most importantly land issues.

64. President Ouattara has displayed leadership in addressing security challenges and initiating key reforms. I particularly welcome the establishment of the National Security Council, which facilitated the adoption of relevant strategies on security sector reform and disarmament, demobilization and reintegration, while a pilot project to demobilize, disarm and reintegrate former combatants has been launched. Moreover, State authority throughout the country is gradually being restored and the National Assembly is working.

65. The economy is on a fast track to recovery, and efforts have intensified to move the country towards economic growth and development. Growth rates are impressive, stemming from an ambitious national development plan coupled with public and private investment, debt relief and international assistance. The strong donor response during the Consultative Group meeting in Paris reflects the steadfast support of the international community to Côte d'Ivoire, its people and their leadership.

66. All of these remarkable achievements reflect the genuine commitment and willingness among many of Côte d'Ivoire's leaders and its people to turn the page and work together towards a more secure, stable and prosperous future. However, continued violence also serves as a reminder that while the country presses forward with key structural reforms, including those needed to address the security situation, the Government will need to deliver on its promises with regard to reconciliation. It will also need to demonstrate tangible improvements in people's living conditions by reducing poverty, creating employment, particularly for youth, including former combatants, and increasing its investments in social services, notably health and education in vulnerable areas.

67. At the same time, there are major challenges that still need to be addressed. Positive developments were tempered by a spate of attacks between August and October, as well as cross-border incidents along the borders with Ghana and Liberia, leading to the death, injury and displacement of people as well as the destruction of property. I condemn all violent attacks, whether they target civilians, such as the attack on an internally displaced persons camp in western Côte d'Ivoire, installations of the former ruling party, the national security forces or critical infrastructure. Such acts of violence, which are designed to cause fear and destabilize the country, must stop. I call on the Government to ensure that the perpetrators are identified and held accountable. I also urge all political actors and the media to refrain from using any inflammatory language that raises tensions or incites violence.

68. In addition to highlighting a higher degree of paramilitary organization within elements of the opposition, the attacks exposed the vulnerability and shortcomings of the national security and law enforcement institutions. Effective security sector

reform is essential to achieve lasting peace and security. I urge the Government and relevant stakeholders to accelerate the implementation of major security sector reforms aimed at establishing disciplined, professional and republican armed forces, with a clear chain of command, and a more effective police and gendarmerie, capable of protecting civilians across the country. While the establishment of the National Security Council and the development of a security sector reform strategy are positive steps, I encourage the Government to consider the development of a transparent and sustainable vetting and recruitment mechanism for all personnel that will be absorbed into or appointed to the security sector institutions. There is also a need to prioritize initiatives to strengthen confidence within and among the police, gendarmerie and armed forces. Efforts to sensitize the population about security sector reform must also be accelerated. I call upon international partners to continue their support for these critical processes.

69. I welcome the progress on disarmament, demobilization and reintegration of former combatants, in particular the establishment of a single Authority for disarmament, demobilization and reintegration and the adoption of a national policy. The Government must now quickly move from conceptualization to actual implementation on the ground and at a scale commensurate with the number of forces to be disarmed, demobilized and reintegrated. I urge the Government to provide UNOCI full access to the new database of former combatants to help ensure its credibility, as called for by the Security Council in its resolution 2062 (2012), and ensure a politically balanced demobilization process. I also encourage the Government to move towards developing a comprehensive and inclusive programme providing reinsertion and reintegration opportunities for all former combatants, including foreign combatants in both Côte d'Ivoire and Liberia, and those that fought on the side of former President Gbagbo. I urge the Government to find effective solutions so that dozos revert to playing their traditional hunter role in Ivorian society and strictly abide by human rights standards.

70. Strengthening justice institutions remains another crucial task for combating impunity and ensuring stability, security, respect for human rights and compliance with the rule of law. I commend the Government's commitment to strengthening the capacity of the judiciary and prison services.

71. However, I remain concerned about continuing human rights violations, including the incidence of sexual violence and rape, from which, notably, women and children continue to suffer. I urge the Government to end impunity by ensuring, as a matter of urgency, that those responsible for serious abuses of human rights and violations of international humanitarian law are brought to justice irrespective of their political affiliation in accordance with its international obligations. I also call upon the Government to ensure that detainees can be visited and that they receive clarity about their status in a transparent manner, or else are released. I wish to reiterate my calls for accountability and for the prosecution of those responsible for crimes committed against civilians, notably in Bonon and the Nahibly camp for internally displaced persons, as well as in Para, where seven peacekeepers were killed in June.

72. The spate of violent incidents also highlights the prevalence of political fractures and tensions. Overcoming those divisions will require genuine political will and efforts from everyone. I welcome the efforts made by President Ouattara to promote reconciliation, including through his visits, and those by members of his

Government, to different parts of the country. I also welcome the initiatives launched by the Dialogue, Truth and Reconciliation Commission to seek broad-based consensus on issues of national concern, including with many youth groups. Those efforts need to be urgently stepped up and followed by gestures and concrete measures to promote reconciliation at all levels and on all sides. I urge the Government to enhance its efforts to engage in meaningful dialogue with the political opposition, including the former ruling and other political parties, and to ensure political space and security for all, which is essential for the stabilization of the country. I also call on the representatives of the former ruling party and the opposition parties to play a more constructive role in promoting dialogue and reconciliation.

73. The forthcoming local elections should provide an opportunity to strengthen the democratic process in Côte d'Ivoire and contribute towards national reconciliation. I urge the Government and all political stakeholders to ensure that the preparations for the upcoming elections, including the timing, relevant electoral reforms and security measures, foster the free, fair and peaceful vote called for by the Security Council and contribute to inclusiveness and reconciliation.

74. I commend the Governments of Côte d'Ivoire and Liberia for increasing their cooperation, including at the highest level. I am also encouraged by the enhanced contacts between Côte d'Ivoire and Ghana. Such cooperation is essential to effectively address cross-border movements of armed elements and weapons as well as illicit trafficking and to ensure that those behind these destabilizing and criminal activities are held accountable. I am disturbed by reports of individuals and networks affiliated with members of the former Government of President Gbagbo inside and outside Côte d'Ivoire involved in financing and carrying out destabilizing activities involving the recruitment and rearming of former combatants.

75. These threats remain a concern for Côte d'Ivoire and the wider subregion. The active engagement of the African Union, ECOWAS and the Mano River Union remain important, including in the context of a subregional strategy. I welcome President Ouattara's efforts, in his capacity as Chair of ECOWAS, to address crisis situations in the subregion. While there have been fewer attacks recently, the border areas remain volatile. Additional attention from the Governments concerned, with the support of the United Nations, is needed to improve the conditions of those living in the border areas.

76. As I have stressed in my previous reports, security measures alone will not address the situation on the border with Liberia. I would urge both the Governments to take concrete and coordinated measures to enhance the protection of civilians, promote reconciliation and ensure the disarmament, demobilization and reintegration of former combatants. UNOCI and UNMIL will continue to support the efforts of the national authorities and regional organizations to this end, while further strengthening inter-mission cooperation arrangements.

77. I would like to thank my Special Representative, Bert Koenders, all UNOCI military, police and civilian personnel and the United Nations country team for their continued commitment and dedication in support of the establishment of lasting peace and stability in Côte d'Ivoire. My appreciation also goes to the troop- and police-contributing countries and to donor countries, and to the regional and multilateral organizations and non-governmental organizations that have continued to provide invaluable support to the country.

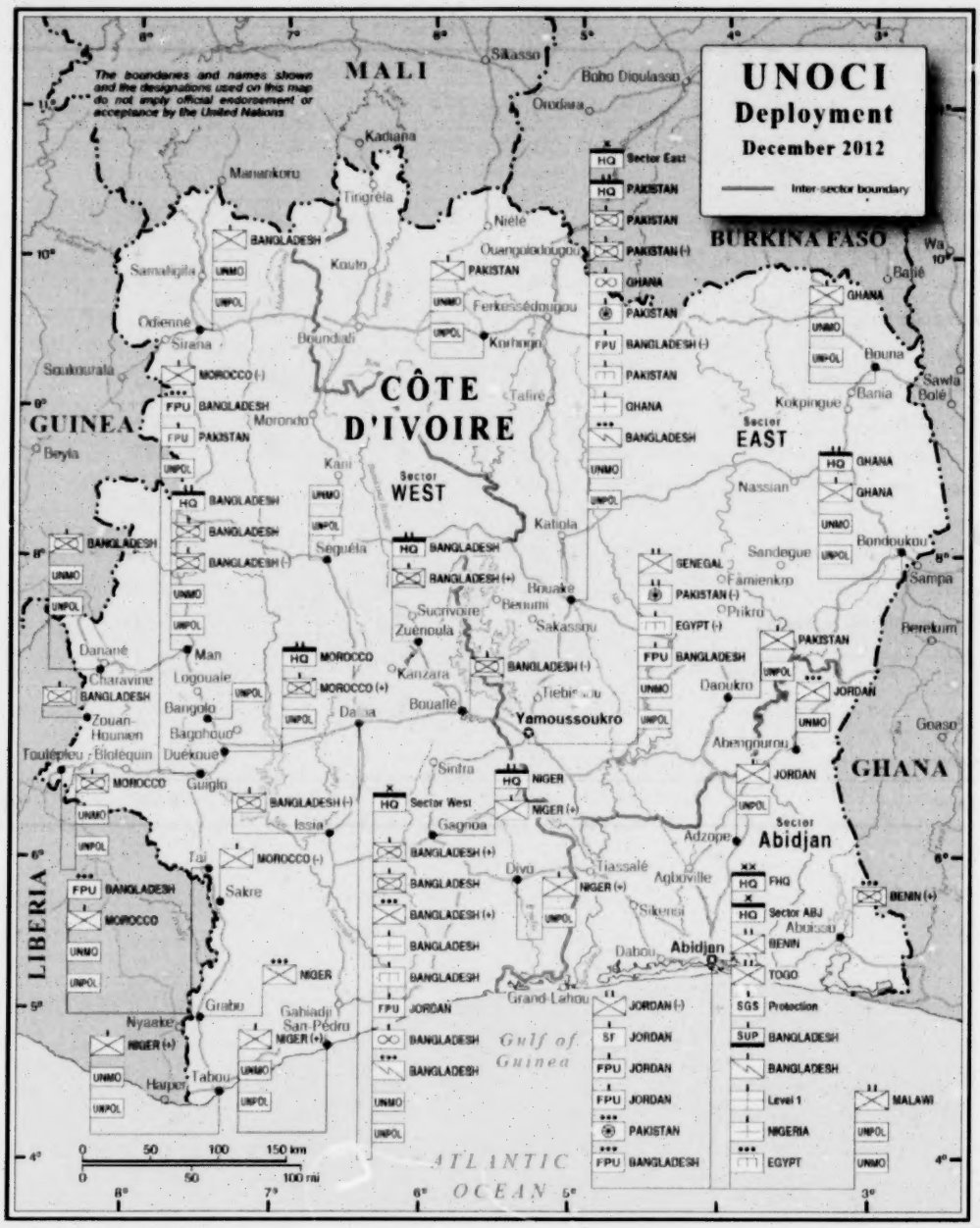
## Annex

### United Nations Operation in Côte d'Ivoire: military and police strength as at 18 December 2012

| | *Military component* | | | | *Police component* | |
|---|---|---|---|---|---|---|
| *Country* | *Military observers* | *Staff officers* | *Troops* | *Total* | *Formed police units* | *Police* |
| Argentina | – | – | – | – | – | – |
| Bangladesh | 13 | 9 | 2 161 | 2 183 | 357 | 1 |
| Benin | 6 | 8 | 420 | 434 | – | 57 |
| Bolivia (Plurinational State of) | 3 | – | – | 3 | – | – |
| Brazil | 1 | 3 | – | 4 | – | – |
| Burkina Faso | – | – | – | – | – | 23 |
| Burundi | – | – | – | – | – | 38 |
| Cameroon | – | – | – | – | – | 19 |
| Canada | – | – | – | – | – | 9 |
| Central African Republic | – | – | – | – | – | 9 |
| Chad | 4 | 1 | – | 5 | – | 23 |
| China | 6 | – | – | 6 | – | – |
| Djibouti | – | – | – | – | – | 28 |
| Democratic Republic of the Congo | – | – | – | – | – | 17 |
| Ecuador | 2 | – | – | 2 | – | – |
| Egypt | – | 1 | 175 | 176 | – | 15 |
| El Salvador | 3 | – | – | 3 | – | – |
| Ethiopia | 1 | – | – | 1 | – | – |
| France | – | 6 | – | 6 | – | 14 |
| Gambia | 3 | – | – | 3 | – | – |
| Ghana | 6 | 7 | 500 | 513 | – | 5 |
| Guatemala | 5 | – | – | 5 | – | – |
| Guinea | 3 | – | – | 3 | – | 10 |
| India | 7 | – | – | 7 | – | – |
| Ireland | 2 | – | – | 2 | – | – |
| Jordan | 7 | 12 | 1 060 | 1 079 | 490 | 26 |
| Madagascar | – | – | – | – | – | 40 |
| Malawi | 3 | 3 | 858 | 864 | – | – |
| Morocco | – | 3 | 723 | 726 | – | – |
| Namibia | 2 | – | – | 2 | – | – |
| Nepal | 3 | 1 | – | 4 | – | – |
| Niger | 5 | 4 | 932 | 941 | – | 58 |
| Nigeria | 5 | 1 | 63 | 69 | – | – |
| Pakistan | 11 | 11 | 1 378 | 1 400 | 149 | – |

| Country | Military component | | | | Police component | |
|---|---|---|---|---|---|---|
| | Military observers | Staff officers | Troops | Total | Formed police units | Police |
| Paraguay | 7 | 2 | – | 9 | – | – |
| Peru | 3 | – | – | 3 | – | – |
| Philippines | 2 | 3 | – | 5 | – | – |
| Poland | 2 | – | – | 2 | – | – |
| Republic of Korea | 2 | – | – | 2 | – | – |
| Republic of Moldova | 4 | – | – | 4 | – | – |
| Romania | 6 | – | – | 6 | – | – |
| Russian Federation | 11 | – | – | 11 | – | – |
| Rwanda | – | – | – | – | – | 16 |
| Senegal | 9 | 7 | 488 | 504 | – | 13 |
| Serbia | 3 | – | – | 3 | – | – |
| Togo | 7 | 8 | 517 | 532 | – | 21 |
| Tunisia | 4 | 3 | – | 7 | – | 11 |
| Turkey | – | – | – | – | – | 16 |
| Uganda | 5 | 2 | – | 7 | – | – |
| Ukraine | – | – | – | – | – | 8 |
| United Republic of Tanzania | 2 | 2 | – | 4 | – | – |
| Uruguay | 1 | – | – | 1 | – | 4 |
| Yemen | 7 | – | – | 7 | – | 13 |
| Zambia | 1 | – | – | 1 | – | – |
| Zimbabwe | 1 | – | – | 1 | – | – |
| **Total** | **178** | **97** | **9 275** | **9 550** | **996** | **494** |

## Map


UNOCI
Deployment
December 2012
Inter-sector boundary
The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations
MALI
BURKINA FASO
GUINEA
CÔTE D'IVOIRE
LIBERIA
GHANA
Gulf of Guinea
ATLANTIC OCEAN
Sector WEST
Sector EAST
Sector Abidjan
Yamoussoukro
Abidjan
Bouaké
Man
Daloa
Korhogo
Odienné
Séguéla
Katiola
Sakassou
Divo
Gagnoa
Soubré
Sassandra
Grand-Lahou
Agboville
Adzopé
Abengourou
Aboisso
Bondoukou
Bouna
Bondoukou
Sampa
Berekum
Goaso
Nassian
Danané
Toulepleu
Guiglo
Duékoué
Bangolo
Logouale
Zouan-Hounien
Bloléquin
Taï
Sakré
Tabou
Grabo
Gabiadji
San-Pédro
Nyaake
Harper
Issia
Sinfra
Kani
Boundiali
Ferkessédougou
Niellé
Tingréla
Kadiana
Sikasso
Bobo Dioulasso
Orodara
Ouangolodougou
Kouto
Samatiguila
Mankono
Seguela
Zuenoula
Sucrivoire
Tiebissou
Kanzara
Bouaflé
Dabou
Jacqueville
Sikensi
Tiassalé
Kokpingue
Bania
Bouna
Bondoukou
Sandegue
Famienkro
Prikro
Daoukro
Abengourou
Abouisso
Aboisso
Bonoua
Grand-Bassam
Assinie
Tanda
Dimbokro
Bocanda
Kouassi-Kouassikro
Toumodi
Yamoussoukro
Bongouanou
Arrah
Agnibilekrou
Abengourou
Bondoukou
Bouna
Tehini
Doropo
Nassian
Bangolo
Toulepleu
Zouan-Hounien
Bloléquin
Danané
Man
Logouale
Bangolo
Duékoué
Guiglo
Taï
Sakré
Tabou
Grabo
Gabiadji
San-Pédro
Nyaake
Harper
Issia
Sinfra
Kani
Boundiali
Ferkessédougou
Niellé
Tingréla
Kadiana
Sikasso
Bobo Dioulasso
Orodara
Ouangolodougou
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Sucrivoire
Tiebissou
Kanzara
Bouaflé
Dabou
Jacqueville
Sikensi
Tiassalé
Kokpingue
Bania
Bouna
Bondoukou
Sandegue
Famienkro
Prikro
Daoukro
Abengourou

United Nations S/2012/965

Security Council

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31 December 2012

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# Letter dated 31 December 2012 from the Chair of the Ad Hoc Working Group on Conflict Prevention and Resolution in Africa addressed to the President of the Security Council

I have the honour to transmit herewith the report of the Ad Hoc Working Group on Conflict Prevention and Resolution in Africa for the period 2012, as endorsed by the members of the Working Group.

I would be grateful if the present letter and the attached report could be circulated as a document of the Security Council.

(*Signed*) Baso **Sangqu**
Chair of the Ad Hoc Working Group on
Conflict Prevention and Resolution in Africa

12-66874 (E) 080113

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# Report on the activities of the Ad Hoc Working Group on Conflict Prevention and Resolution in Africa for the period January-December 2012

## I. Introduction

1. The Ad Hoc Working Group on Conflict Prevention and Resolution in Africa is a subsidiary organ of the Security Council, established pursuant to presidential statement S/PRST/2002/2, in which the Council recognized the need for adequate measures to prevent and resolve conflicts in Africa and indicated its intention to consider the setting up of an Ad Hoc Working Group to monitor the recommendations contained in its presidential statement and to enhance coordination with the Economic and Social Council.

2. The Ambassador and Permanent Representative of South Africa to the United Nations, Baso Sangqu, was appointed as Chair of the Ad Hoc Working Group for the period ending 31 December 2012 (see S/2012/2). This present report reflects the activities of the Ad Hoc Working Group that were conducted in 2012.

## II. Report on the programme of work of the Working Group in 2012

3. During the reporting period, the Working Group convened meetings to consider two thematic issues, namely, "Enhancing African Union-United Nations cooperation" and "Promotion of and respect for the rule of law and justice in the prevention and resolution of conflicts in Africa".

4. On 8 June 2012, the Working Group held a meeting on enhancing African Union-United Nations cooperation, and was briefed on that occasion by Ms. Louise Bailey, Senior Policy Officer, Permanent Observer Mission of the African Union to the United Nations; Mr. Sam Ibok, Director, Africa I Division, Department of Political Affairs of the United Nations Secretariat; and Mr. Youssef Mahmoud, Senior Adviser, International Peace Institute. The main aim of the meeting was to discuss ways in which commitments made by the Security Council in its resolution 2033 (2012) could be implemented and actualized. Further, the meeting examined how the African Union and United Nations could further strengthen their relations and cooperate in the prevention of conflict in Africa.

5. The panellists underscored the importance of taking advantage of early warning capacities, such as the Panel of the Wise, and pointed to the need to strengthen the already existing early warning mechanisms. In respect of enhancing the working relationship between the African Union Peace and Security Council and the United Nations Security Council, it was recommended that incoming Security Council members be briefed on the working methods of the African Union Peace and Security Council, in order to enhance the working relationship between the two Councils on issues dealing with conflict resolution and management. Furthermore, it was suggested that the two Councils establish a system for conflict analysis assessment and share warning analyses.

6. It was recalled that the high-level meeting of the Security Council, held on 12 January 2012, on cooperation between the United Nations and regional and subregional organizations in maintaining peace and security had been a concrete

expression of the political will of the Council to establish a more effective working relationship with those organizations. It was recommended that the relationship between the two Councils have the opportunity to benefit from more flexible interaction. Many speakers at the June meeting of the Working Group emphasized the progress that had been made in respect of the cooperation between the two Councils; however, it was also noted that the two bodies had fallen short in the political area, with some participants expressing the view that the challenge could be addressed through a better understanding of the concepts of subsidiarity and comparative advantage. During the meeting, it was stressed that communication and increased consultations were needed between the two Councils, as the African Union had become a strategic partner of the United Nations.

7. On 8 September 2012, the Working Group held a meeting on the promotion of and respect for the rule of law and justice in the prevention and resolution of conflicts in Africa. The panellists invited were Ambassador Paul Seger, Chair of the Burundi configuration of the Peacebuilding Commission and Permanent Representative of Switzerland to the United Nations; Professor Tiyanjana Maluwa, Associate Dean for International Affairs, Penn State Law Faculty; and Jose Alvarez, Professor of International Law, New York University. At this seminar, the relationship was discussed between the rule of law and conflict prevention, particularly within the Security Council. The discussion allowed for an exchange of views on the application of the rule of law. Practical insights were shared on the challenges regarding the implementation of the rule of law in Africa and how the rule of law applied to the efforts of the international community to resolve conflicts, with a focus on the role of the Council.

8. During the meeting, it was noted that the application of the rule of law at the national level and application at the international level were closely linked and that the countries that applied the rule of law at the national level usually also did so internationally. Some participants expressed the view that the rule of law was a necessary condition for peace, and that there should be no opposition between the two concepts, since there could be no rule of law without peace and vice versa. However, the example of Darfur was used to illustrate another view, namely, that the single-minded pursuit of justice did not necessarily bring peace. In this regard, some speakers recommended revisiting the sequencing of referrals to the International Criminal Court. Others emphasized the importance of enforcing arrest warrants and noted that the main flaw with respect to the referrals had been the lack of cooperation of States in accordance with Security Council resolutions.

9. The responsibility and ownership of the country concerned with respect to reinstating the rule of law were underscored, with some speakers stressing the need for the international community to support local efforts in that regard, including through the provision of political support. One speaker considered that it was imperative to understand that there are no one-size-fits-all solutions in establishing rule of law in different contexts, adding that the United Nations had to respect national ownership while providing guidance and encouragement.

10. There were views expressed at the meeting that the Security Council needed to adhere to international law and the Charter of the United Nations when resolving conflicts, and that concerted efforts were required to ensure the implementation of Council resolutions without discrimination.

11. Drawing from the experiences of Burundi, where a very strong civil society had promoted and fought for the rule of law, it was opined at the seminar that the rule of law could not be dissociated from social and political issues. It was noted that "bottom-up" pressure was generally conducive to establishing the rule of law, but that the presence of both bottom-up pressure and "top-down" pressure were even more desirable in this regard.

## III. Conclusion

12. During the tenure of South Africa as Chair of the Working Group, the Chair had placed significant emphasis on making the meetings open to non-members of the Security Council as well as to civil society organizations, especially those active on the ground. The Chair had encouraged open and frank discussions in order to cultivate ideas that could positively contribute to enhancing the work of the Council, especially since its agenda is predominantly focused on issues concerning Africa.

13. The Chair would like to recommend that the Working Group continue to hold more open meetings of this nature. During his tenure, the Chair had utilized diverse expertise from academia, the United Nations Secretariat and other practitioners. This greatly enriched discussions by providing different types of expertise and experience. The Chair therefore encourages the continuation of this practice. Furthermore, the Chair encourages the periodic revisiting of some topics, in order to examine in greater depth those challenges that continue to persist in Africa, with a view to identifying mitigating mechanisms through continuous dialogue.

14. In addition, it should be recalled that, in paragraph 185 of its resolution 2033 (2012), the Security Council decided to follow up on the communiqués of the annual consultative meetings of the two Councils, including through its Ad Hoc Working Group on Conflict Prevention and Resolution in Africa. The Working Group should thus continue to exercise this important mandate entrusted to it by the Council.

15. Moving forward, the Chair notes that the various meetings have produced highly useful recommendations regarding the relationship of the Security Council with the African Union Peace and Security Council, as well as on enhancing the rule of law in post-conflict settings, which could enhance the work of the Council. In this connection, the Chair would like to propose that the Council hold an interactive discussion or retreat based on these recommendations in order to consider those recommendations that could possibly be incorporated into the work of the Council. It would be important to infuse the valuable outcomes of the Working Group discussions into the country-specific and substantive work of the Council.

16. The Chair would like to express his personal gratitude and that of the delegation of South Africa to the members of the Working Group for their collaboration and the support extended to him in the discharge of the mandate of the Working Group. The appreciation of the Chair is also extended to organizations and all individuals who greatly enriched the discussions of the Working Group.

17. Finally, I would like to thank the Secretariat for assisting us in fulfilling our mandate, in particular Mr. James Sutterlin, Ms. Marilyn Alfred and Mr. Oseloka Obaze, who had previously assisted us. The Chair wishes his successor all the best in continuing with the important work carried out by the Working Group.

United Nations S/2012/966

# Security Council

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31 December 2012
English
Original: French

## Letter dated 27 December 2012 from the Secretary-General addressed to the President of the Security Council

I have the honour to refer to Security Council resolution 2083 (2012), in which the Council decided to extend the mandate of the Office of the Ombudsperson, established by resolution 1904 (2009), as reflected in the procedures outlined in annex II of resolution 2083 (2012), for a period of 30 months. In the same resolution, the Council requested me to strengthen the capacity of the Office of the Ombudsperson to ensure its continued ability to carry out its mandate in an effective and timely manner.

Accordingly, I wish to inform you that I have reappointed Ms. Kimberly Prost (Canada) to serve as Ombudsperson.

I should be grateful if you could bring this information to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

12-66844 (E) 020113 020113

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United Nations S/2012/967

Security Council

Distr.: General
31 December 2012
English
Original: French

## Letter dated 28 December 2012 from the Secretary-General addressed to the President of the Security Council

I have the honour to refer to Security Council resolution 2078 (2012) concerning the Democratic Republic of the Congo, by which the Council requested me to extend, for a period expiring on 1 February 2014, the Group of Experts established pursuant to resolution 1533 (2004) and renewed by subsequent resolutions.

Accordingly, I wish to inform you that, following consultations with the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo, I have appointed the following experts:

- Mr. Nelson Alusala, Kenya (arms)
- Mr. Henry Fomba, Cameroon (customs and aviation)
- Mr. Bernard Leloup, Belgium (regional issues)
- Ms. Marie Plamadiala, Republic of Moldova (armed groups)
- Ms. Emilie Serralta, France (natural resources)

I have also selected Ms. Serralta to serve as Coordinator of the Group of Experts.

I should be grateful if you would bring this information to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

12-66850 (E) 030113 030113

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United Nations S/2012/968

Security Council

Distr.: General
31 December 2012

Original: English

# Letter dated 31 December 2012 from the Chair of the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities addressed to the President of the Security Council

I have the honour to transmit herewith the thirteenth report of the Analytical Support and Sanctions Monitoring Team established pursuant to resolution 1526 (2004), which was submitted to the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, in accordance with paragraph (a) of annex I to resolution 1989 (2011).

I should be grateful if the attached report could be brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Peter **Wittig**
Chair
Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities

12-57789 (E) 030113

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# Thirteenth report of the Analytical Support and Sanctions Implementation Monitoring Team submitted pursuant to resolution 1989 (2011) concerning Al-Qaida and associated individuals and entities

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*Summary*

The present report is the thirteenth and the last to be produced by the experts of the Analytical Support and Sanctions Implementation Monitoring Team, first appointed in March 2004 pursuant to Security Council resolution 1526 (2004). It considers what has been achieved by the Security Council and its 1267 (1999) Committee established pursuant to Council resolutions 1267 (1999) and 1989 (2011) and now referred to as the Al-Qaida Sanctions Committee against the Al-Qaida threat over the last eight and a half years and offers ideas on how the sanctions regime might be further developed. It does so against the Team's assessment that, like the sanctions regime, the threat to international peace and security posed by Al-Qaida and its associates has changed significantly during the period. While the sanctions regime has become more effective, the threat from Al-Qaida as a global terrorist organization has declined. The report looks for any correlation between these two developments.

# I. The threat

1. Over the last 10 years the biggest changes to Al-Qaida have been the weakening of its core leadership and the rise of its regional affiliates. Even though security authorities around the world have continued to discover individuals and small cells planning attacks in the name of Al-Qaida, the movement has fragmented and lost momentum. The regional affiliates have grown in strength and importance, but Aiman Muhammed Rabi al-Zawahiri (QI.A.6.01) and others around him have not been able to unite them in any coherent way. They pursue local goals and are bound together more by a shared name and occasional expressions of mutual support than by any common strategy or operational cooperation. And as non-conventional politics have swung away from the terrorist activity of the few towards the largely peaceful political protest of the many, it appears that the Al-Qaida agenda has become increasingly irrelevant and ineffective.

2. Where regional or national affiliates have managed to gain control of territory, they have faced the challenge of becoming more than terrorist groups, and, in giving practical expression to their ideas, they have lost popular support. Al-Qaida's difficulty in maintaining popular sympathy has led to a fall-off in its funding, which has forced it into increasing criminality and thus further exposed its lack of legitimacy. The Al-Qaida responsible for the attacks of 11 September 2001 has disappeared; the movement is now in transition towards one with a weaker core, a more fractured structure, greater focus on local issues and less capability and motivation to mount attacks on a global scale. However, the threat from Al-Qaida as a global terrorist movement persists, and it is likely to become harder to assess and harder to deal with.

## A. Al-Qaida senior leadership

3. The Al-Qaida leadership has not recovered from the death of Usama bin Laden in May 2011, and its influence is in decline under the indistinct guidance of Aiman Muhammed Rabi al-Zawahiri. As a consequence, the global vision of Usama bin Laden has no outward expression, although the underlying argument that he advanced, that western influence is a more significant problem than local misrule, retains some attraction.

4. The relentless drone campaign in the Afghanistan-Pakistan border area has not just thinned the ranks of Al-Qaida's senior members, it has also forced the survivors to cut almost all contact with potential new recruits. Many foreign fighters have headed home or to other conflict zones,[1] and several have been captured in doing so.[2] Communications with affiliates outside the immediate area has become difficult, and the message to supporters remains uninspiring: do what you can where you can, with whatever means are at your disposal.

[1] Such as Mali, Somalia, the Syrian Arab Republic and Yemen.

[2] Pakistan official briefing to the Team, July 2012.

## B. Al-Qaida affiliates

5. Al-Qaida associates in Pakistan such as Lashkar i Jhangvi (QE.L.96.03), the Tehrik-e Taliban Pakistan (TTP) (QE.T.132.11) and Harakat-ul Jihad Islami (QE.H.130.10) continue to commit terrorist acts against the State and, more often, against the local population, although to a lesser degree than in previous years. It is hard to see any coherence in this violence except a cynical exploitation of a vulnerable community by individuals pursuing their own political and commercial interests. The distinction between militants who say they fight only the foreign invaders in Afghanistan, such as Mullah Nazir, Hafiz Gul Bahadur and the Haqqani family, and those who openly target Pakistan continues to erode.[3] There have been fewer Al-Qaida members fighting in Afghanistan,[4] although Kunar and Nuristan provinces in the east have attracted a particularly unpleasant mix of militants ready to attack targets on both sides of the Afghan border. One group that has remained prominent however is the Islamic Movement of Uzbekistan (IMU) (QE.I.10.01), which continues to burnish its reputation for exceptional violence and ruthless attacks. It is now more active in the northern provinces of Afghanistan, such as Balkh and Kunduz, than elsewhere in the country, but it is also present in Pakistan.

6. Elsewhere, Al-Qaida branches and affiliates have experienced mixed fortunes and face uncertain futures. Al-Qaida in the Arabian Peninsula (AQAP) (QE.A.129.10) has managed to take control of a large amount of territory in Yemen, including several major towns, but has found it harder than expected to sustain control. Its tribal allies deserted it when it tried to supplant local tradition and custom with a new order based on its own subjective values and on narrow and ill-founded interpretations of sharia law. AQAP remains intent on attacking targets in Yemen and Saudi Arabia, and threatens to mount attacks further afield, and it has the capacity to do so,[5] but in the short term it will need to regroup and reconsider its strategy in Yemen before looking elsewhere. The reported death in early October 2012 of its main ideologue, Adil al-Abab, who tried to rebrand AQAP under the name of Ansar al-Shari'a, will cause at least a temporary drop in recruitment efforts.

7. The Organization of Al-Qaida in the Islamic Maghreb (AQIM) (QE.T.14.01) has seen its profile rise as the international community has focused on the success of its allies in Mali. The Movement for Jihad and Oneness in West Africa (MUJAO) and Ansar Dine now control all of northern Mali, and it is hard to see how they might be dislodged despite the international community's determination to do so. Although some regional powers are reluctant to lump MUJAO and Ansar Dine together with the Al-Qaida in the Islamic Maghreb, arguing that the first is largely criminal, the second nationalist and the third terrorist,[6] the differences between them are slight, and there is no doubt of the regional threat that they pose. Thus far, the groups have not yet shown a capability to attack beyond the region. In Nigeria,

[3] The TTP and the IMU released calls to target Pakistan as much as Afghanistan in April and August 2012. Both are present in areas where Mullah Nazir, Hafiz Gul Bahadur and the Haqqanis hold sway. Hafiz Gul Bahadur and Mullah Nazir both blocked a government-organized polio eradication programme in north and south Waziristan in June 2012.

[4] The International Security Assistance Force (ISAF) kill and capture reports for 2012 mention about 250 Al-Qaida supporters in the north, north-east and east of Afghanistan.

[5] Statement purporting to be by AQAP of 6 June 2012.

[6] Views expressed to the Team at a special meeting of regional intelligence services in October 2012.

Boko Haram claims to share the global objectives of Al-Qaida and worries neighbouring States, particularly Niger, as to its long-term objectives, and although its activity is primarily focused on Nigeria, its fighters have been reported in northern Mali, Niger and even Somalia.[7]

8. Al-Qaida in Iraq (AQI) (QE.J.115.04) has become more active, and it remains a vicious sectarian group with no agenda beyond the local redistribution of power. It has sent a few people to join the fight in the Syrian Arab Republic, but, based on information available to the Team, the Al-Nusra Front and other Syrian rebel groups that fly a black flag are only peripherally associated with Al-Qaida, if at all, and are unlikely to provide it with a foothold in the country regardless of how the rebellion against the rule of President Bashar al-Assad plays out.

## II. Implementation of the sanctions regime

9. Since 2001 the Security Council has adopted many new procedures designed to improve the efficiency and effectiveness of the Al-Qaida sanctions regime.[8] Some have addressed the concerns of Member States about the fairness of the regime while others have resulted from suggestions from within the Team itself on ways to improve implementation. Many of the new procedures have also become established practice for other Council sanctions regimes. Indeed the Al-Qaida regime has become something of a standard-setter in both the development of its procedures and in the refinement of its sanctions measures. It has also been a testing ground, most notably for the introduction of the Ombudsperson mechanism,[9] certainly the most innovative and daring of all the procedural changes made by the Council to date.[10]

### A. The Ombudsperson

10. The Ombudsperson mechanism has found wide and active support among States both within and outside the Committee, and it has become a robust system of impartial review for listed individuals and entities that previously could seek remedy only by an approach to the Committee through the focal point, once it was created in 2006,[11] or in national and regional courts and treaty bodies.

11. In its tenth report the Team recommended that the Committee take the initiative from its critics and satisfy the growing demand for "some form of independent review".[12] It advised that an Ombudsperson mechanism would achieve this better than a review panel and would be more likely to reinforce the sanctions regime than undermine it. The creation of the Ombudsperson mechanism by Security Council resolution 1904 (2009) has largely fulfilled these objectives. And when the Council, by its resolution 1989 (2011), again in line with a recommendation from the Team, made the Ombudsperson's decisions final unless overturned by a consensus in the Committee or a vote in the Council, it came as close to meeting the calls for an independent and binding review mechanism as seemed possible.

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[7] As reported to the Team by officials of the Governments of Niger and Nigeria in October 2012.

[8] See annex III.

[9] Introduced by Security Council resolution 1904 (2009).

[10] For a table of the main changes in procedures since 2004, see annex III.

[11] Introduced by Security Council resolution 1730 (2006).

[12] S/2009/502, para. 42.

12. Since the adoption of Security Council resolution 1904 (2009), the Committee has acted in the spirit of the Ombudsperson's "observations" in all but one case and, subsequent to the adoption of resolution 1989 (2011), has accepted all her recommendations.[13] This has made the officials of some Member States with the uncomfortable feeling that the Ombudsperson mechanism has undermined the decision-making role of the Committee. They have recognized that in a case where the Ombudsperson recommends a delisting, it is extremely unlikely that the Committee will reject that conclusion by consensus. No Committee member has taken its objection to an Ombudsperson's recommendation to the Council, as provided for in resolution 1989 (2011), paragraph 23, although inevitably not all have gone unchallenged. It is in fact hard to envisage circumstances under which a member of the Committee would ask to take a disputed delisting request to a vote unless it was already evident that at least nine members of the Council agreed that the decision of the Ombudsperson was wrong and no permanent member thought it was right. There is a real disincentive for a Committee member to resort to the Security Council both because it exposes a lack of consensus within the Committee and because, unless the outcome was assured, the State concerned would be likely to reveal previously undisclosed information in order to persuade the same group of States that had disagreed with it to change their minds.

13. The introduction of the Ombudsperson mechanism has therefore had profound consequences for the sanctions regime. In effect, the Security Council has accepted some erosion of its absolute authority by allowing a single person appointed by the Secretary-General, albeit with the Council's agreement, to have a determining influence on its decision-making process. Furthermore, although the Ombudsperson is not obliged, when considering a case for delisting, to consider whether an original listing was well-founded, in the end, the original case must be examined and commented on in order to decide whether the listing is still appropriate. This has led to the Committee reconsidering the criteria for listing in practice, though without changing their scope in theory.

14. The Ombudsperson mechanism is not without its potential for errors in judgement. For example in some cases the Ombudsperson must make a subjective assessment on the extent to which the sanctions measures themselves, rather than a fundamental change of attitude, have persuaded a petitioner to stop supporting Al-Qaida. She also has to make a judgement about the truthfulness of the petitioner without the benefit of any third-party cross examination of the party's claims or assertions. However, the Ombudsperson has made clear that the burden lies on the States presenting the information, not on the petitioner, to produce support for specific allegations,[14] and one significant advance, again in line with an earlier recommendation by the Team, has been the growing willingness of States to share classified information with the Ombudsperson.[15] Even so, it is unclear how the Ombudsperson might easily check the veracity of classified information or the reliability of the sources used without revealing its substance to the petitioner and inviting an explanation of the circumstances and facts of the reported involvement with Al-Qaida.

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[13] Including delisting requests submitted previously through the Focal Point mechanism but rejected by the Committee.

[14] S/2012/590, para. 34.

[15] As at the end of October 2012, 12 States had agreements or arrangements to share confidential information with the Ombudsperson, including three permanent members of the Security Council. See www.un.org/en/sc/ombudsperson/accessinfo.shtml.

15. Now that it is an established part of the Al-Qaida sanctions regime, it is highly unlikely that the Security Council would abolish the Ombudsperson mechanism before it brought the regime as a whole to an end. In fact, supposing that, by that time, the mechanism had not spread to other sanctions regimes, it is probably the only way in which the Council could agree to remove it. Much of the success of the mechanism therefore depends on the character, judgement and perception of the Ombudsperson. In order to encourage continuity while preserving flexibility, the Team recommends that the Council allow the Secretary-General to appoint someone to the post for longer than the current 18-month term, but with the assumption that no one would serve in that capacity for more than a total of five years.

16. The Team does not recommend further action in terms of making the Ombudsperson's decisions binding on the Committee. In practice, such decisions are just as binding as those of a national or regional judicial body. Moreover, the mechanism allows a thorough examination of all the circumstances surrounding a listing, from its inception to the present time, and consideration of all the factors that may make it appropriate or no longer appropriate, including political factors. In this regard, the mechanism is well suited to the nature and practice of the Security Council and its Al-Qaida Sanctions Committee.

## B. Legal challenges to the sanctions regime

17. After a period of reform, the sanctions regime has reached a stable, if temporary, equilibrium with respect to due process issues, although at least two outside factors might upset this balance. The European Court of Justice has before it an appeal of the decision of 30 September 2010 in favour of Yasin Abdullah Ezzedine Qadi,[16] which, potentially, might reinforce its analysis of the Ombudsperson's mandate, which the Court found wanting at that time. Secondly, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has produced a report which is critical of the Ombudsperson system in some respects.[17]

18. The most prominent recent judicial decision, concerning the formerly listed Youssef Nada on 12 September 2012,[18] did not do much to change the legal landscape. The European Court of Human Rights decided the case in favour of Nada on generally the same basis as the European Court of Justice decided for Qadi, thus conforming with the majority legal view that individuals must have an effective remedy from the implementation of the sanctions measures. However, because the European Court evaluated the pre-Ombudsperson regime, and since it was such a specific case on the facts,[19] it is not clear that the decision will have broader impact. The Nada case did raise the issue of exemptions, however, and had he been able to petition the Committee (or Ombudsperson) directly for a travel exemption, the case might have turned out differently.

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[16] Judgement of the General Court (Seventh Chamber) of 30 September 2010, T-85/09, *Kadi v. Commission*; available at http://curia.europa.eu.

[17] A/67/396.

[18] Judgement of the Grand Chamber of the European Court of Human Rights of 12 September 2012 in case *Nada v. Switzerland* (No. 10593/08); available at www.echr.coe.int.

[19] The judgement concerned the travel ban as applied to Nada, who lived in a small Italian enclave surrounded by Switzerland.

19. The pending European Court of Justice case involving Qadi, on the other hand, has the potential to have a significant impact on the regime, even though the Committee removed his name from the Al-Qaida Sanctions List on 5 October 2012 following his application for delisting through the Ombudsperson mechanism. The decision may turn on whether the Ombudsperson process has sufficient capability to provide a fair hearing and adequate relief, the principal fault identified by the lower General Court. The Court held a hearing on 16 October 2011, and will likely reach its decision by late 2012 or early 2013.[20]

20. In his report, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism argued that the Ombudsperson mechanism, even with the enhancements provided by resolution 1989 (2011), does not provide sufficient judicial independence to ensure due process for petitioners.[21] He suggests that there is no legal bar to a binding judicial review of a Security Council decision by the Ombudsperson.[22] In addition to proposing the elimination of the procedures for overturning the Ombudsperson's recommendation by means of Committee consensus or Security Council referral, the Special Rapporteur contends that the Ombudsperson is not sufficiently independent and should be given a longer term of office (three years minimum), as well as the authority to make her decisions public.[23] He also recommends a number of other measures, including that the Ombudsperson may disclose the identity of the designating State; that legal representation may be funded by the Security Council; and that information be excluded if the Ombudsperson determines it to have been the product of interrogation under torture.[24]

21. The Team does not dispute that in the abstract, adjudication mechanisms with the features the Special Rapporteur has outlined may be preferable to those that lack them. However, the report does not fully address the unique situation, particularly the politics, of Security Council designations in a way that could help create an opening for further improvements to the system. Among other things, the Special Rapporteur does not acknowledge the effectiveness of the existing reverse-consensus procedures in creating the right kind of political incentives among Committee members. The report's focus on "structural due process"[22] is particularly challenging since the Council has managed to design an Ombudsperson process in perhaps the only way acceptable to all its members, and has provided for an effective and fair review in practice. Accordingly, while the report contains a number of potentially helpful suggestions, its impact is likely to be less than the next judicial opinion pertaining to a particular listing.

## C. Periodic reviews of the List and term limits

22. The idea that listings should expire after a set period has enjoyed a measure of support for some years. Prior to the creation of the Ombudsperson mechanism and its expansion, as with any decision by the Committee, it required the agreement of all members to remove an individual or entity from the List, and the idea that a

[20] See http://curia.europa.eu/jcms/jcms/Jo1_6581/?dateDebut=16/10/2012&dateFin=16/10/2012.

[21] See A/67/396, para. 35.

[22] Ibid., para. 17.

[23] Ibid., paras. 36 and 59 (a).

[24] Ibid., para. 59 (b).

listing should lapse after a fixed number of years unless there was a consensus to renew it was proposed as a way to turn the Committee's tendency towards stasis into a force for removing disputed entries rather than for retaining them. Moreover, many, including the Team, argued that limiting the time frame of the measures from the outset was in better conformity with the intention of the Security Council that they should be preventative rather than punitive.

23. While the Team supports any mechanism that helps ensure that the List reflects the current and future threat rather than looks backwards, the argument in favour of term limits has lost much of its force by virtue of the success of the Ombudsperson process and the presumption, codified in Security Council resolution 1989 (2011), that when the Committee is conducting a review, a designating State's position in favour of delisting should prevail. Of course, with respect to the preventative nature of the sanctions measures, the argument in favour of term limits still holds, although the triennial review mechanism serves essentially the same purpose.

24. By its resolution 1822 (2008), the Security Council instructed the Committee to review all listings every three years if they had not been the subject of examination within that period. The Committee was to determine, among other things, whether the listing remained appropriate, and in doing so, it was to consult designating States as well as States of residence and nationality. By paragraph 27 of resolution 1989 (2011), if a designating State recommends a delisting, then the listing will only survive if all members of the Committee agree to retain it.[25] This means that the outcome of the triennial review is highly dependent on the view of the designating State. To strengthen the impact of the triennial review still further, the Team recommends that unless the designating State argues for continued listing, and provides its detailed reasons for doing so, the Committee should act as if the designating State had recommended delisting in accordance with paragraph 27 of resolution 1989 (2011).

25. The Team also recommends that the Committee ask relevant States what other efforts they have made to address the threat posed by the listed party at the triennial review. Ideally, listing should be just one of a collection of measures taken by States. A designating State should have a particular responsibility to take additional active steps to mitigate the threat expressed by the listing; it should not just pass the responsibility to the international community through the Committee.

## D. Narrative summaries

26. Narrative summaries of reasons for listing now exist for all entries on the List. The Team has found submitting States willing to engage in a detailed discussion of the case for listing to ensure that the narrative summary includes key, even if not all, relevant information and that it does not stray from the criteria for listing as set out by the Security Council. The narrative summaries are not necessarily intended to show the strength of the case for listing, but they do provide guidance as to the nature of the threat, and allow a listed party the opportunity to formulate a focused request for delisting.

[25] The same rule applies to reviews of reportedly deceased individuals and defunct entities, and of entries on the List that lack identifiers.

## E. Issues of compliance

27. There have been few reports of Member States taking specific action against listed parties, whether by freezing their assets, stopping them at borders or preventing their access to the means of attack. It is reasonable to ask, therefore, whether the sanctions have had the intended restrictive effect. The Committee has often expressed disappointment at this apparent lack of impact and has questioned the true commitment of States to implement the measures. It has asked the Team to provide examples of non-compliance.

28. The Team has found it difficult to do so. It holds the view that instances of non-compliance or non-implementation rarely indicate a State's political unwillingness to comply, or a deliberate decision not to comply. States often face difficult decisions about how to treat listed parties present within their jurisdiction and, rather than just be seen to comply, a State should consider how to comply so that the objective of compliance is achieved as closely as possible. However, the directives of the Security Council are both mandatory and clear, and the Team has recommended, and the Committee has agreed, that in cases in which a State identifies a particular problem with compliance, whether through fear of the likely unintended consequences, a lack of knowledge of the listed party's activities or a lack of capacity, the State should approach the Committee (or the Team) for advice. The Team also recommends that the Committee invite States to discuss problems of compliance when these are brought to the Committee's attention by whatever means.

29. In some instances a listed person is in possession of identifiable assets but is not considered a threat by the State where they are held; this can lead to half-hearted compliance with the measures. However, almost all such cases have now been resolved by an Ombudsperson review resulting in delisting, and this has helped the Team to make the argument to States where this situation occurs that it is better that they submit for delisting or encourage an approach to the Ombudsperson than be in breach of their obligations.

30. A third issue has been when listed persons have travelled to places where border controls are lax, non-existent or not enforced. In many parts of the world, including much of Europe and Africa, border control is more of a concept than a reality. While in some countries it would be possible to strengthen border control if there were the resources and political will to do so, in others this is not a realistic option. For example, to talk of improving border controls in Mali is to deny the reality of a boundary over 7,000 km long that follows no notable physical features, passes through a great deal of flat land or desert and divides a poor country from a total of seven similarly resource-strapped neighbours. Compliance in such circumstances is a matter of doing what is possible.

31. Throughout its mandate, the Team has believed that universal compliance is most likely achieved by building a sense of engagement and co-ownership of the sanctions regime between the Security Council and other Member States. No country supports the global objectives of Al-Qaida, nor has any country ever done so, and by having the great majority of States agree to support the sanctions regime to the best of their ability and accept a shared responsibility to address the threat, those States that are least punctilious about compliance are the ones most subject to pressure from their peers and neighbours, as well as from the Security Council and the Committee, to improve their performance.

## F. Impact of the sanctions

32. The Team notes the Committee's view, as expressed in its position paper on the recommendations contained in the Team's twelfth report, that measuring the impact of sanctions is not a priority task.[26] The Team believes, however, that the only way in which the Security Council can improve the measures is through knowing their impact, both on intended and unintended targets. The Team recommends that the Committee reconsider its position and that the Council mandate the next Team to collect and analyse information on the impact of the sanctions regime both on the threat to international peace and security posed by Al-Qaida and its affiliates in general and on listed parties in particular. The Team also recommends that, insofar as the Committee is able to make a judgement on this, it should weigh the impact of the regime against the cost of its implementation.

33. The Team also recommends that the Committee judge the impact of the sanctions regime as part of the wider effort to promote international counter-terrorism cooperation. In this respect, the Team believes that the regime has been and continues to be successful. It has brought States together in a joint endeavour based on an agreed assessment of the particular threat from Al-Qaida and its listed associates, and has provided a focus for joint action. The Security Council, through the combined work of the Al-Qaida Sanctions Committee, the Counter-Terrorism Committee and their expert groups, has provided a forum for discussion and a framework for action common to all Member States.

# III. The List

34. The effective implementation of globally targeted sanctions measures requires considerable effort and resources. For this reason, as well as for reasons of fairness, the Committee should not — and does not — agree on new listings without due consideration.

35. Listing has the effect of imposing restrictive measures, deterring others from following the same path, alerting the international community to threats and notifying listed parties of the need for a change of behaviour. Sometimes the arguments against listing outweigh those in favour, despite the individual or entity meeting the criteria, for example when a State is of the opinion that a listing would unduly promote the importance of the individual or entity, encourage recruitment or give the impression that Al-Qaida is more active than it is.

36. Some listings are symbolic in that they are unlikely to have any practical effect, for example against illegal entities or fugitives from justice. But if States begin to view the sanctions regime as largely symbolic, and allow their standards of implementation to fall as a result, the regime will lose one of its most important effects as a major deterrent, particularly in the field of terrorist financing. The Team recommends that when listing groups or entities that have no legal existence, the Committee make a special effort to list, at the same time, their principal leaders and benefactors, particularly if their whereabouts are known. The Committee should also endeavour to specify their region of activity as precisely as possible. The Team also repeats its recommendation that the Committee should require designating States to

[26] S/2012/730.

pass on to it (or to the Team) any information they may have about the assets of the targeted individual or entity at the time they submit the name for listing.

37. The Committee has devoted a great deal of effort to improving its List. It has accepted proposals by the Monitoring Team to make around 400 amendments to the List since March 2004, turning vague references to poorly identified targets into actionable entries with sufficient identifying details to allow States to apply the measures. The private sector has also become engaged, asking the Committee through the Team to improve the format of the List and to introduce greater standardization to aid the laborious and expensive process of checking financial transactions against List entries as demanded by national regulatory authorities. An added benefit has been the agreement by other national and regional bodies that issue sanctions lists to work with the Team to design a list format that they too can adopt in order to increase still further the benefits of standardization.[27]

38. In addition, since 2004, the frequent reviews of all List entries, as demanded in various resolutions over the last years, have removed a total of 79 entries for people the Team has reported to be dead (26), entities it believes defunct (44) or entries that the Committee has decided provide insufficient detail to ensure accurate identification (9).[28] Each of these reviews, all of which are reliant on the support of relevant States,[29] has served to enrich the List and ensure that the information it contains is as current as possible.

39. One disappointment for the Security Council and the Committee must be that, despite all these efforts to improve the List and the procedures for listing and delisting, more States have not come forward with the submission of names. It is still generally the same small group of countries that is most active in proposing new entries (or deletions). This may reflect a waning concern about the threat posed by Al-Qaida and its affiliates, although there are several jurisdictions in which the movement still poses a challenge and where a listing might be appropriate. The commitment to implement the measures against existing targets has not, yet, led to a broader enthusiasm to apply them to new ones.

40. The Team recommends that the Committee continue to make every effort to eliminate inadequate and irrelevant entries from the List. Few examples remain, but the more ruthless the Committee can be in ensuring that the List approaches an up-to-date compendium of the main elements of the international threat posed by Al-Qaida and its associates, the more credibility States will give to the sanctions regime. The Team also recommends that the Committee reach out to States where individuals or entities that appear to meet the criteria for listing are active to discuss the merits of adding their names to the List.

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[27] The United States Office of Foreign Assets Control is in the process of introducing a compatible format for its list of designated individuals and entities and the European Commission and the United Kingdom Treasury are considering doing the same.

[28] For information about delistings, see press releases available at www.un.org/sc/committees/1267/pressreleases.shtml.

[29] States of residence and nationality and designating States.

## A. Explaining the criteria for listing and its expected benefits

41. In its resolution 1617 (2005), following a recommendation by the Team in its second report,[30] the Security Council first explained what it meant by "association" as a criterion for listing. This was not just helpful guidance for submitting States, but it also helped the listed to understand what they had to do to be delisted. The narrative summaries of reasons for listing, introduced by resolution 1822 (2008), expand both the general and particular understanding of the Committee's standards for listing. Even so, the Team recommends that the Committee provide further guidance on its criteria for listing beyond association,[31] in particular by explaining the specific objectives of individual listings.

42. In reaching its decisions, it is important that the Committee examine thoroughly and understand the likely impact of any listing. The submitting State should explain why listing is preferable to any other action, such as arrest and prosecution. In the case of listing people who are already incarcerated, it should explain what additional protection the listing is intended to provide.[32] In the case of an individual living beyond the reach of the State, or of a group which has no legal existence, the submitting State should explain what it hopes to attain from the listing. The State should also explain the reasons and the necessity for its decision to submit a name. By demanding that States provide a full rationale for their listing submissions, beyond merely stating how the parties meet the criterion of association, the Committee would be in a better position to allow all its members to exercise their responsibilities in considering the proposal, rather than leaving it up to those States that have the greatest capacity to check the facts.

## B. Joint designations and co-sponsorship

43. While the Team recognizes that joint designations are a good way to demonstrate that listing submissions have broad support, multiple co-designators can complicate the application of the rules introduced by resolution 1989 (2011). The Team therefore recommends that the Committee allow joint designation at the time of submission, but otherwise to make it clear that if a State wishes to join a designation after the initial submission, it must be with the agreement of the original designating State and must lead to the provision of further substantive information in support of the proposed listing.

44. The Team also recommends that if disagreement arises between joint designators as to the continued appropriateness of a listing, the Committee should favour the listed party.

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[30] S/2005/83, annex, para. 32.

[31] Such as offering non-ideological material support.

[32] For example the prevention of other people's access to relevant funds for terrorist purposes, or the direction of funds for that purpose by the incarcerated individual or as a deterrent, or the denial of recruitment efforts, or training through the provision of face-to-face expertise.

# IV. The assets freeze

## A. Trends in terrorist financing

45. Terrorists, like other criminals, adapt to circumstances. When it comes to financing, they may change their methodology if one means of raising, storing and moving money becomes more difficult, or if another becomes easier. Recent trends in the ways listed parties finance their operations as observed by the Team suggest a decrease in legal means, such as donations, and an increase in crime. While fraud and theft have long been staples of terrorist finances, groups have turned to more organized activity, in particular kidnapping for ransom.

### 1. Legitimate sources of funding

46. Discussions with law enforcement officers have shown that terrorists in some countries have funded their attacks from legitimate sources, including by self-funding,[33] by using funds collected from family members,[34] through using social benefits, including disability and unemployment benefits, and by diverting education grants. Furthermore, individuals have used their personal bank accounts to support terrorist activity overseas.[35] The abuse of non-profit organizations to finance terrorism also remains common, although there is some evidence that this has declined since 2008 as regulations have been tightened.[36]

### 2. Funding through crime

47. Increasingly terrorists are raising money through criminal activity. According to some calculations, 34 per cent of terrorist financing related disclosures since 2008 could also be linked to money-laundering offences.[37] Investigations have also found connections between terrorist financing and human trafficking, credit or debit card fraud and travel document fraud. The narcotics trade has become an important source of funding for AQIM and its associates in West Africa where traffickers pay terrorists to ensure the safe passage of cocaine to European markets.[38] In recent years, kidnapping for ransom has also emerged as a significant source of terrorist financing. The United States Government estimates that terrorist organizations have raised approximately $120 million from ransom payments since 2004.[39]

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[33] Australian Transaction Reports and Analysis Centre Typologies and Case Studies report 2012, available at www.austrac.gov.au/files/typ_rprt12_full.pdf.

[34] See Financial Transactions and Reports Analysis Centre of Canada Typologies and Trends Reports, April 2012, available at www.fintrac.gc.ca/publications/typologies/2012-04-eng.pdf.

[35] See Asia-Pacific Group on Money Laundering Yearly Typologies Report 2012, available at www.apgml.org/frameworks/docs/11/APG%20Yearly%20Typologies%20Report%202012_FINAL.pdf.

[36] For example, Financial Transactions and Reports Analysis Centre of Canada Typologies and Trends Reports, April 2012. In 2010/11, 20 per cent of the suspected terrorist financing cases involved the use of non-profit organizations as compared to 29 per cent in 2007/08.

[37] See Financial Transactions and Reports Analysis Centre of Canada Typologies and Trends Reports, April 2012, available at www.fintrac.gc.ca/publications/typologies/2012-04-eng.pdf.

[38] According to an official briefing to the Team by the authorities of Algeria.

[39] *Kidnapping for Ransom: The Growing Terrorist Financing Challenge*, David S. Cohen, United States Under Secretary of the Treasury for Terrorism and Financial Intelligence, 5 October 2012, available at www.chathamhouse.org/sites/default/files/public/Meetings/Meeting%20Transcripts/051012Cohen.pdf.

## B. Effectiveness and a risk-based approach

48. In its previous reports the Team has noted that there are few good ways to measure the specific success of the international effort to counter terrorist financing against the overall effort to combat financial crime. Apart from the difficulty of detecting terrorist financing in advance of an attack, the amounts involved are insignificant when compared with the estimated $2 trillion that criminals attempt to launder each year.[40]

### 1. Developments in the Financial Action Task Force

49. The Financial Action Task Force (FATF) is the key international standard-setting body for both counter-terrorism financing and anti-money-laundering activities. In February 2012, the Task Force revised its 40+9 recommendations on combating money-laundering and the financing of terrorism and, since 2012, their proliferation. Since 2012 it has been working out the modalities for the next round of its mutual evaluations. These mutual evaluations provide a useful incentive for States to implement the revised recommendations, and give a fair indication of how well they have succeeded.

50. Importantly, the next round of evaluations will analyse both technical compliance with the revised recommendations and the effectiveness of the measures adopted. This approach will allow an objective assessment of how well national regimes to counter money-laundering and terrorist financing work in practice, not just how they are meant to work in theory. At the highest level, the outcome sought under the FATF measures is to ensure that financial systems and the broader economy are protected from the threats of money-laundering and the financing of terrorism and its proliferation, thereby strengthening financial sector integrity and contributing to safety and security.

51. Under its revised recommendations, FATF embraces an enhanced risk-based approach to combating money-laundering and terrorist financing. This enhanced approach builds on the previous 40+9 recommendations, which, to some extent, allowed States to permit financial institutions to use a risk-based approach with respect to certain obligations in this area. According to the Task Force, the risk-based approach is an effective way to combat money-laundering and terrorist financing since it ensures the optimum use of available resources.

52. The adoption of a risk-based approach will require national authorities, financial institutions and designated non-financial businesses and professions to have in place processes to identify, assess, monitor, manage and mitigate money-laundering and terrorist financing risks. Countries will then be in a position to respond to those risks by applying enhanced measures with respect to high-risk scenarios and simplified measures in cases in which the identified risk is low.

53. FATF acknowledges, however, that the application of a risk-based approach to combating terrorist financing may pose difficulties in as much as the transactions related to terrorist financing do not display the same characteristics as those related to

[40] See *Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes*, October 2011, available at www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf.

money-laundering.[41] Terrorist financing may involve resources from both legitimate and illegal sources. Where illegal funds are involved, the anti-money-laundering tool kit may be useful in combating terrorist financing, although often transactions related to terrorist financing involve small amounts, which are usually considered to be a very low risk for money-laundering. Where funds are derived from legal sources it is even more difficult to determine if they are intended for terrorist financing purposes.

54. The application of a risk-based approach to countering terrorist financing requires the identification of an extensive set of indicators on the methods and techniques used for terrorist financing that can be used to undertake risk assessments, and the fact that limited typologies are available on terrorist financing makes it difficult to assess the risks. FATF is currently developing further guidance on money-laundering and terrorist financing risk assessments in the process of which it will no doubt address some of these difficulties.

55. It is important to ensure that States understand that a risk-based approach does not offer an option with respect to implementation of the Al-Qaida sanctions regime. The Al-Qaida sanctions regime assets freeze measure applies to listed persons as a mandatory obligation under the Charter of the United Nations and not as a function of risk. The Team has been working closely with FATF to ensure that this point is properly understood.

## C. Implementation of the assets freeze

56. By publicly identifying jurisdictions that have weaknesses in their systems and procedures to counter money-laundering and terrorist financing, the process of the FATF International Cooperation Review Group has spurred immediate corrective action. In this context, the Team has been called upon by a number of States to provide comments on existing and draft instruments designed to implement the assets freeze under FATF Special Recommendation III, now Revised Recommendation 6.

57. The Team has observed several common shortcomings in measures adopted for implementing the assets freeze, including:

(a) Assets freeze measures in a number of countries have been crafted in restrictive language, which has created difficulties in the implementation of the Al-Qaida assets freeze following the split of the Al-Qaida and Taliban sanctions regime in June 2011. Existing instruments in a number of countries refer to the "Consolidated List", thus making it difficult to implement assets freeze measures against individuals and entities designated on the Al-Qaida Sanctions List after June 2011. The Team recommends that the Committee remind States that, as a result of the split of the Al-Qaida and Taliban sanctions regime, the "Consolidated List" no longer exists. States should also take note of the guidance provided by FATF on the implementation of Revised Recommendation 6;

(b) In some countries, the definition of "funds and other financial assets or economic resources" is not broad enough to cover (i) the provision of Internet hosting or related services, used for the support of Al-Qaida and other individuals, groups,

[41] Guidance on the risk-based approach to combating money-laundering and terrorist financing, high-level principles and procedures (FATF, June 2007), available at www.fatf-gafi.org/media/fatf/documents/reports/High%20Level%20Principles%20and%20Procedures.pdf.

undertakings or entities associated with it, (ii) the payment of ransom to individuals, groups, undertakings or entities on the Al-Qaida Sanctions List, and (iii) the proceeds derived from crime including from drugs, all of which are specified in relevant resolutions of the Al-Qaida sanctions regime;[42]

(c) Procedures that allow for exemptions to the assets freeze, let alone notification of such exemptions, are seldom discussed. In some cases, where procedures are in place, they are not in line with the procedures under Security Council resolution 1452 (2002) in that there is no provision for notifying the Committee, and in a number of cases the Courts are empowered to grant such exemptions without further reference to the Committee. This is in specific contradiction to the release of funds for extraordinary expenses, which requires explicit Committee approval under resolution 1452 (2002);

(d) Procedures for the unfreezing of assets following a delisting are not specifically addressed;

(e) The implementation of the second limb of the Al-Qaida assets freeze as a targeted financial sanctions measure has been largely ignored.[43]

The Team recommends that the Committee provide further guidance to help Member States understand these points.

58. The Team continues to work with FATF and FATF-style regional bodies to raise awareness of the Al-Qaida sanctions regime.[44] Following the revision of its 40+9 recommendations, FATF is in the process of reviewing its guidance papers. The Team, in close cooperation with the Counter-Terrorism Committee Executive Directorate, has provided extensive comments on the Task Force's best practices paper on targeted financial sanctions related to terrorism and terrorist financing.

59. The Team recommends that the Committee continue to support the activities of FATF as potentially the most influential standard-setter for the effective implementation of the assets freeze and complement the Team's engagement with its own direct contact. This could be done, with or without the Counter-Terrorism Committee, by a letter or an invitation to the Task Force to address the Committee.

## D. Alternative remittance systems: mobile banking

60. In its tenth report,[45] the Team stated its intention to look more closely into mobile banking and to make recommendations on the practical implementation of

[42] See Security Council resolution 1989 (2011), paras. 6-8. Speaking in London on 5 October 2012, the United States Under Secretary of the Treasury for Terrorism and Financial Intelligence said that kidnapping for ransom: "has become perhaps the most challenging and fastest growing technique that terrorist organizations, in particular the affiliates of [AQIM and AQAP], have been using to fund themselves over the last couple of years", available at www.chathamhouse.org/sites/default/files/public/Meetings/Meeting%20Transcripts/051012Cohen.pdf.

[43] "... ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by persons within their territory", Security Council resolution 1989 (2011), para. 1 (a).

[44] Currently, the Team is working with three FATF-style regional bodies: the Asia-Pacific Group on Money Laundering, the Eastern and Southern Africa Anti-Money Laundering Group and the Middle East and Northern Africa Financial Action Task Force.

[45] S/2009/502, para. 64.

the assets freeze measure within that form of alternative remittance. Accordingly, the Team has conducted a desk review of the literature in order to obtain a better understanding of the terrorist financing risks associated with this new payment method (see annex II).

61. The mobile banking industry represents a huge business opportunity and will continue to develop rapidly both in the short- and medium-term. A recent survey anticipated that by 2012 as many as 290 million people who had previously been without bank accounts could be using mobile banking services, and that such services had the potential to deliver $5 billion in direct revenues and $2.5 billion in indirect revenues to mobile operators annually.[46] The mitigation of terrorist financing risks in a context of rapid development and a high influx of low value transactions will be difficult, especially for Governments in the developing world where the use of mobile banking services is becoming more prevalent and resources are limited. For this reason, and in line with the international standards on countering terrorist financing, countries should be encouraged: (a) to identify and assess the terrorist financing risks in relation to the use of mobile banking services before they launch such services; and (b) to take appropriate measures, including customer due diligence, record-keeping and suspicious transaction reporting, to manage and mitigate the risks. The Team further recommends that States require mobile network operators to integrate an adequate monitoring mechanism into their information systems to enable them to flag and freeze financial flows to and from listed entities and individuals.

## E. Exemptions from the assets freeze

62. Security Council resolution 1452 (2002) is designed to allow listed individuals and entities specific exemptions from the assets freeze on application by their States of residence, but it has not worked well. Although 12 States have applied for exemptions under resolution 1452 (2002) since its adoption, there are 18 other States where listed individuals are resident at known addresses that have made no application for an exemption on their behalf, thus raising the question of how these listed individuals are able to survive. The Council has not been able to agree upon a system that either gives discretion to States to grant exemptions according to local conditions, or that sets standards for exemptions that would work in all areas of the world. In order to come up with workable proposals for the reform of the exemptions procedure, the Team has canvassed the opinion of all States in which listed individuals are recorded as living, but the response has been of very limited value. The Team has therefore been unable to offer a solution to the fact that there is a Council resolution, adopted under Chapter VII of the Charter, which is largely being ignored.

63. Ten of the other 13 sanctions regimes established by the Security Council provide for exemptions along the lines of resolution 1452 (2002), despite its drawbacks. Insofar as the Team can ascertain from the other expert groups, applications are no more frequently made in these cases than in the case of the Al-Qaida sanctions regime. The Team recommends therefore, that if the Council

[46] See Protecting Mobile Money against Financial Crimes (World Bank, 2011), available at www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/03/10/000333037_20110310000727/Rendered/PDF/600600PUB0ID181Mobile09780821386699.pdf.

remains unwilling to adapt resolution 1452 (2002) to allow States greater leeway in permitting exemptions for ordinary expenses, it should leave things as they are. The current system allows for constructive ambiguity, that is, it allows the Committee to raise questions if it learns of exemptions that seem egregious and should therefore fall under the category of extraordinary expenses, meriting its closer examination.

## F. General indicators of terrorist financing

64. As part of its outreach to private sector financial institutions, on which the implementation of the assets freeze ultimately relies, the Team led a study supported by the Counter-Terrorism Implementation Task Force, which aimed to identify possible indicators of terrorist financing.[47] Private sector banks had asked for such a study to help them focus their reporting on suspicious activities more precisely. For the purposes of the study, the researchers conducted interviews with financial institutions and law enforcement officers from countries that had a number of prosecuted terrorism cases and examined publicly available information on known cases of terrorist financing and terrorism.

65. Noting that much terrorist funding relies on legal sources, the Team anticipated that the study would show that terrorists did what most financially motivated criminals do: make money in the easiest and least detectable way possible. This indeed appears to be the case. Based on the limited amount of information accessible to the researchers, the study found that "terrorists and financiers appear to act in ways that resemble classic money-laundering typologies regardless of whether they are trying to launder proceeds of crime". Even if it is of little immediate value to the private sector, the study answered a request by several banks for guidance and reassured them that their concerns and roles are appreciated and taken into account by the Committee.

66. Over the past 10 years financial institutions have devoted considerable financial and human resources to ensure that their services are not abused for terrorist financing purposes. There is no doubt that robust customer due diligence measures and the monitoring of transactions and business relationships enable financial institutions to identify and report suspicious transactions, however, despite the wealth of information that they hold in their systems, it is extremely rare that a financial institution is able to link suspicious activity with terrorist financing. Nonetheless, the study commissioned by the Counter-Terrorism Implementation Task Force found that "the information provided by financial institutions remains critically important to intelligence and law enforcement efforts to disrupt terrorism. Initiatives to enhance information-sharing between Governments and the private sector should be promoted". The study also found that "when intelligence on possible terrorist activities is shared with financial institutions, the information financial institutions can provide on financial transactions is vital and unavailable from other sources".

[47] Conducted by Sue Eckert (Brown University), Richard Gordon (Case Western Reserve University) and Nikos Passas (Northeastern University) and available shortly through the Counter-Terrorism Implementation Task Force website (www.un.org/en/terrorism/ctitf/index.shtml).

# V. The travel ban

## A. Effectiveness of the travel ban

67. It is difficult to measure the effectiveness of the travel ban measure. States are not obliged to report to the Committee when they have prevented a listed person crossing their borders, and the Committee has received no reports from Member States over the last eight years that they have done so. Although the Team has learned of cases where a listed individual has been turned back at an international border, or has managed to cross with a travel document that does not exactly match the List entry, these cases are very few. It is clear, however, that some listed parties have not travelled because of the ban, and that others have had to assume a false identity to do so.

## B. Common challenges to the implementation of the travel ban

68. One issue that affects the implementation of the travel ban is the sheer number of names on similar lists and the need for States to include the names on the Al-Qaida Sanctions List on their own watch lists.[48] While the Al-Qaida Sanctions List has never exceeded 500 names, it is believed, for example, that as at the end of October 2012 close to 21,000 names were on the United States Transport Security Administration no-fly list,[49] and about 3,000 names were on the Commonwealth of Independent States database of terrorists and suspected terrorists.[50]

69. These numbers overwhelm State authorities, especially given the need to speed passengers through busy border crossing points, and even those authorities that have access to sophisticated databases can still miss matches because of variations in spellings, especially in transliterated names. The Team has been working with the International Civil Aviation Organization (ICAO), the International Air Transport Organization (IATA) and the International Criminal Police Organization (INTERPOL) to see what can be done to improve techniques for matching travellers against the Al-Qaida Sanctions List. In this regard, the introduction of biometrics on machine-readable travel documents will eventually make a major difference. But before that happens, the Committee will have to decide how hi-tech they are prepared to make the List, and States will have to acquire the necessary machinery and train their officials to use it. The Committee has accepted a recommendation by the Team to encourage States to provide biometric and other additional information when submitting a listing request, and the new standard form for listing provides space to do so. Thus far no State has offered such information, nor has the Committee or its Secretariat found a way to disseminate it.

70. Another issue is that even where States are prepared and legally able to share information with the Committee, their national databases of people of interest generally contain classified or privileged information, and the process of

[48] Neither the International Civil Aviation Organization (ICAO) or the International Air Transport Organization (IATA) provide United Nations sanctions lists to aviation security authorities or to airlines, nor do their manuals recommend screening passengers against such lists even though airlines must often take charge of passengers refused entry at their point of destination.

[49] These figures remain confidential and this estimate is based on research by the Team.

[50] Briefing to the Team by a security official of the Russian Federation in October 2012.

declassification is complicated, highly regulated and time-consuming. Security authorities may also prefer to keep information that they have about a listed person who is also wanted to answer criminal charges to themselves for fear of alerting him or her to the extent of their knowledge. Law enforcement agencies may also prefer to exchange information with counterparts and discount the value of adding information to a list that would only prevent people from crossing a border but not result in their arrest or any other action. Other authorities that have additional information on a listed person, but have no reason to investigate or charge him under their national legislation, may also hesitate to provide additional details because of privacy and human rights concerns.

71. One difficulty that the Team has found, although less over time, is the role played by ministries of foreign affairs as the official channels of communication between the United Nations and State authorities. In some cases, this has made it difficult for information to reach the right point in a timely manner and with sufficient explanation, and has discouraged an open exchange. Over the last eight years however, with the agreement of the relevant foreign ministries, the Team has been able to establish direct contact with national counter-terrorism authorities in many States and to add their addresses to the e-mail lists maintained by the Committee secretariat for routine notifications. The Team recommends that all States ensure that similar relationships may be developed between the Committee and their relevant officials.

72. As mentioned in paragraph 30 above, a further challenge to the enforcement of the travel ban arises because many States have porous borders and unsophisticated border controls. The international community is actively engaged in seeking ways to strengthen borders in some parts of the world, while elsewhere regional bodies are seeking, for both commercial and political reasons, to weaken them. Regardless of these trends however, there are many countries where there is no realistic prospect of the efficient enforcement of border controls any time soon, regardless of the level of assistance available.

## C. Exemptions

73. Since the introduction of exemptions to the travel ban by the Security Council in its resolution 1390 (2002), States have made three successful applications. While this suggests that the system needs no immediate revision, the Team recommends that the Council allow listed individuals to apply for an exemption to the travel ban without needing a State sponsor and that they should do so through the Ombudsperson. The Ombudsperson could then examine the request, forward it as appropriate to the Committee and, if the Committee agrees, alert the States concerned.

## D. Travel documents issued to listed persons

74. Nothing in the sanctions regime prevents listed individuals from holding valid travel documents or acquiring new ones. The Team notes, however, that many Member States have adopted the practice of annotating travel documents issued to their nationals which limit their validity, for example, for travel to certain countries. The Security Council could encourage States that issue travel documents to listed individuals to note that the bearer is subject to the travel ban and corresponding

exemption procedures. Another way to increase the chances that border and transportation security officials will be alerted to the status of a listed person who attempts to cross an international border is the wider use of INTERPOL's Travel Documents Associated with Notices search platform. This allows border authorities to check passport data to see if the holder is the subject of a Special Notice.[51] The Council could draw the attention of Member States to this tool just as it has to the INTERPOL Stolen and Lost Travel Documents database.[52] The Committee, in its tenth report, saw merit in inviting States to ensure that airlines are aware of any travel ban.[53] In this regard, the Council could encourage States to notify IATA and ICAO that listed individuals are "inadmissible passengers" for international travel unless exemptions apply.[54]

# VI. The arms embargo

## A. Use of arms by listed entities

75. While the Al-Qaida leadership has increasingly found itself limited to the use of videos as the only weapon in its armoury, Al-Qaida affiliates have added to their arsenals, some of them with heavy weapons.[55] Such equipment is not associated with terrorist attacks and the escalation in the quality of its equipment has made the Al-Qaida in the Arabian Peninsula, for example, look more like a paramilitary force than a terrorist group. Similarly, the flow of heavy weapons from Libya to the affiliates of the Organization of Al-Qaida in the Islamic Maghreb in northern Mali has encouraged fighters there to define themselves more in terms of the territory they hold than by the asymmetric attacks they launch against the States of the region.

76. A reverse process is under way in Somalia; the Al-Qaida-affiliated group Harakat Al-Shabaab Al-Mujaahidiin (Al-Shabaab) has faced severe military setbacks as an organized military force in control of territory and may now revert to more obvious terrorist tactics. Al-Shabaab has already launched small-scale attacks and suicide bombers against targets in Somalia and Kenya, but it has not yet done so further afield since the attack in Kampala in July 2010. The opportunity exists, however, and the Committee will have to keep an eye on the extent of the threat and decide whether the activities of Al-Shabaab, which is already listed under the sanctions regime established pursuant to Security Council resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, could be further curbed by listing it under the Al-Qaida sanctions regime as well.

77. The fluctuation in the profile and tactics of listed entities according to the weapons they possess and the weakness of opposing State authorities is a particular feature of groups affiliated with Al-Qaida which has accelerated the trend away

[51] See INTERPOL Annual Report 2011, available at www.interpol.int/News-and-media/Publications#n627.

[52] For a description of INTERPOL databases, see www.interpol.int/INTERPOL-expertise/Databases.

[53] S/2010/125, para. 14.

[54] IATA maintains a travel information management system that contains Member State requirements for entry into their territories, which airlines check before boarding passengers.

[55] For example, Ansar al-Shari'a (listed as AQAP) managed to capture tanks and other heavy weapons from the Yemeni armed forces, and AQIM has received weapons looted from Libyan Government stockpiles.

from a global terrorist campaign to more local action. The risk remains however, that civilian targets, including aircraft, may become more vulnerable depending on the range and lethality of the arms used. The arms embargo has therefore become still more important. In cases where listed parties or those associated with them become involved in local uprisings, the Security Council and the Committee could consider applying the arms embargo as a way to prevent lethal weapons from getting into the wrong hands by establishing embargoes applicable to areas held by insurgents associated with Al-Qaida,[56] and by putting such insurgents on notice that they will themselves be listed if they do not cease such association.[57]

## B. Scope of the arms embargo

78. Although all Member States have adopted general arms control measures, they largely discount the benefit of creating specific instruments to target Al-Qaida and its listed associates,[58] despite the Committee's encouragement to do so.[59] As guidance, the Committee has set out the measures it supports in position papers and in an explanation of terms paper,[60] and the Team recommends that the Security Council consider the value of encouraging Member States to implement such measures in the operative section of a resolution.

79. Although the "associated with" criterion for listing[61] includes the act of "recruiting for" listed entities, the sanctions measures do not address this activity directly. The Committee has expressed support for the Team's recommendation that the Security Council explicitly prohibit the provision of human resources to listed entities, and specify that the arms embargo covers training and recruitment comprehensively.[62] The Committee has also supported the idea that the Security Council should require States to prevent listed individuals and entities from having access to, establishing or maintaining military or terrorist training facilities within their borders.[63] Moreover, the Committee has agreed with the Team that the "technical advice, assistance or training" criterion should cover both those who conduct, direct or provide technical advice, assistance or training for listed parties

[56] For example, similar to the arms embargo targeting the territory of Afghanistan under Taliban control, as designated by the 1267 Committee, see Security Council resolution 1333 (2000), para. 5.

[57] In its resolution 2071 (2012), the Security Council called upon Malian rebel groups to cut off all ties to terrorist organizations, notably AQIM, and expressed its readiness to impose targeted sanctions on those that failed to do so.

[58] For example, it appears that many States do not circulate the List beyond military weapons import and export control agencies. There may therefore be a lack of coordination, both within Governments and between them and those private sector entities that deal with arms, materiel or know-how subject to the arms embargo.

[59] S/2008/16, para. 27.

[60] Most recently discussed in the Monitoring Team's eleventh report (S/2011/245, para. 64). The explanation of terms paper on the arms embargo is available at www.un.org/sc/committees/1267/usefulpapers.shtml.

[61] See Security Council resolution 1617 (2005), para. 2.

[62] See the position of the Committee on the recommendations contained in the Team's seventh report (S/2008/16, para. 23), confirmed in its position on the tenth report (S/2010/125, para. 15). The Committee has provided examples of pertinent legislation in its document on Member States implementation experiences which details such measures, available at www.un.org/sc/committees/1267/ExperiencesofMemberStates.pdf.

[63] See the position of the Committee on the recommendations contained in the Team's eighth report (S/2008/408, para. 21).

as well as those who receive it.[64] The Committee has elaborated its views in its explanation of terms papers and, once again, the Team recommends that the Security Council consider reflecting those views in a future resolution.

## C. Indirect and extraterritorial provision

80. To prevent the indirect supply, sale or transfer of arms and related materiel to those on the List, the Committee has endorsed the Team's recommendation to encourage the creation of mechanisms, at both the national and international level, to ensure that neither buyers nor end users of arms appear on the List or are acting on behalf of any listed individual or entity.[65] The Committee is aware of the difficulties of implementing the arms embargo against unlisted parties who provide arms to listed parties, but it has clarified that compliance requires States to do so.[66] The Committee has also encouraged States to share information about such individuals, including through INTERPOL.[67] The Security Council could reinforce these positions. Furthermore, it could task the Team to provide information to the Committee on non-listed individuals who act on behalf of listed entities in violation of the arms embargo with a view to adding their names to the List.[68]

## D. Requirement to abide by the arms embargo

81. The Team has recommended establishing a formal obligation on listed parties to abide by the sanctions and on States to inform them of the measures in place against them.[69] The Committee has fully supported the Team's recommendation that States ensure that their nationals do not breach the arms embargo, and if they do, to ensure that they have the domestic legislation necessary to take action against them.[70] The legal requirement to abide by national measures to implement the arms embargo could be communicated to listed parties when they are notified of their listing pursuant to paragraph 20 of Security Council resolution 1989 (2011).

## E. International standards related to the arms embargo

82. International standards routinely do not reference related Security Council sanctions regimes, despite the obligation of Member States to comply with them.

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[64] See the position of the Committee on the recommendations contained in the Team's sixth report (S/2007/229, para. 18), confirmed in its position on the tenth report (S/2010/125, para. 15). The Committee paper on the experience of Member States in the implementation of the sanctions measures describes such measures.

[65] See S/2008/16, para. 22.

[66] The Committee has clarified its position in its explanation of terms document.

[67] See the position of the Committee on the recommendations contained in the Team's ninth report (S/2009/427, para. 26).

[68] The Security Council has, for example, mandated the Monitoring Group on Somalia and Eritrea to include in its reports any information relevant to the potential designation of individuals and entities (see Security Council resolution 2060 (2012), para. 13 (a)).

[69] As proposed in the Team's seventh report (S/2007/677, para. 111).

[70] See the position of the Committee on the recommendations contained in the Team's fifth report (S/2006/1047, para. 16), and on the recommendations contained in the Team's seventh report (S/2008/16, para. 29).

Article 48 of the Charter of the United Nations requires Member States to observe mandatory decisions of the Council not only directly but also through their action in appropriate international agencies of which they are members. The Committee has agreed in principle to ensure that other international initiatives on arms control recognize the existence of the provisions of the Al-Qaida arms embargo. The Committee has also agreed to encourage States to use INTERPOL Weapons and Explosives Tracking System and other relevant mechanisms developed by international organizations such as ICAO, IATA and the World Customs Organization, to support their implementation of the arms embargo.[71] In addition, the Council has supported such coordination, making specific references to the role of other international bodies in resolution 2017 (2011) on Libya and 2071 (2012) on northern Mali.[72]

## F. Potential violations of and non-compliance with the embargo

83. Although the implementation of the arms embargo is an obligation on all Member States,[73] some States have complained to the Team that they have suffered from the lax enforcement of the embargo by other States. While provisions for dealing with the matter are established in paragraph 46 of Security Council resolution 1989 (2011), no State has yet to formally ask the Committee to take action in this regard. However, many heavy or advanced weapons systems acquired by Al-Qaida's affiliates are traceable, thereby providing a basis for investigating the path of their supply. The Team has no investigative mandate, but Committee members with the necessary capacity could address these issues and bring them to the Committee's attention. Alternatively, the Council could modify the mandate of the Team in line with recommendations by the Secretary-General on the exchange of information between United Nations institutions.[74] More visible enforcement could energize implementation of and contribution to the sanctions regime in the many countries that actively support the work of the Committee.

[71] See the position of the Committee on the recommendations contained in the Team's eighth report (S/2008/408, para. 20, and S/2008/16, paras. 25 and 26). See also the Team's tenth report (S/2009/502, para. 84).

[72] For existing references, see Security Council resolution 1735 (2006), para. 23. By its resolution 1989 (2011), annex I, subpara. (v), the Security Council further mandated the Team to work with relevant international and regional organizations in order to promote awareness of, and compliance with, the measures. See also the Team's twelfth report (S/2012/729, para. 64).

[73] The aims of the arms embargo also fall in line with the provisions of the United Nations Global Counter-Terrorism Strategy approved by consensus by all Member States in September 2006; see General Assembly resolution 60/288, annex, preambular para. 1 (c), sect. II, paras. 1, 5 and 13, and sect. III, paras. 9-12.

[74] The Secretary-General noted in his report on small arms that "the Security Council may wish to encourage a strengthening of practical cooperation among relevant Security Council sanctions monitoring groups, peacekeeping missions, Member States and their investigative authorities, as well as relevant regional and international organizations" (S/2011/255, para. 36).

# VII. Activities of the Monitoring Team

## A. Visits

84. The Team visited 12 Member States in the seven-month period between April and October 2012, bringing the total number of States visited at least once since its first appointment to 98. These visits have been of immense value to the Team and, it hopes, to the Committee and the States concerned. They have helped the Team to understand the challenges that Member States face in ensuring full implementation of the measures and work out potential solutions; they have helped the Team to understand how different States perceive the threat from listed parties, and make suggestions as to how the sanctions regime could better reflect their views; they have exposed the Team to the range of counter-terrorist actions taken by States and to the officials who are responsible for both action and policy; they have identified the concerns of Member States about the procedures of the Committee and have helped produce ideas to improve them; but most of all they have helped to build an energetic partnership between States and the Committee, which has helped to develop a truly coordinated international response to the threat from Al-Qaida.

## B. International, regional and subregional organizations

85. The Team has delivered training courses and made presentations at international meetings around the world, including meetings organized by the African Union, the Asia-Pacific Group on Money Laundering, the European Union, the Organization of American States and many other regional groups. In addition it has participated in innumerable forums and seminars in all parts of the world, and in many meetings of FATF and FATF-style regional bodies.

86. Attendance at these meetings has provided the Team with the opportunity to explain the sanctions regime and its objectives and to encourage implementation. As a result, the Committee has become well known and its procedures the subject of much debate, almost all of it supportive of its objectives. The regime has become a standard setter for the targeted sanctions measures of the Security Council, and the work of the Committee and the Team have given the United Nations an operational role in counter-terrorism to match the procedural and normative role provided by the Counter-Terrorism Committee established pursuant to Security Council resolution 1373 (2001) and its Executive Directorate.

87. The Team has played a particularly active role in the development of measures to counter the financing of terrorism, both within and outside FATF. This has been of particular importance as worldwide regulation has had to adapt to keep pace with the changed methodology of terrorists. As a result, more States are able to implement the assets freeze according to their national legislation, and those that cannot are working on finding ways to do so.

## C. Cooperation with INTERPOL

88. The Team's cooperation with INTERPOL has also had a major impact, leading to the introduction of the INTERPOL-United Nations Security Council Special Notices for listed individuals and entities, which have also spread to other Council

sanctions regimes. The Team is now an integral part of INTERPOL training courses and is involved in much of INTERPOL's engagement with the United Nations. INTERPOL has continued to post on its public website INTERPOL-United Nations Security Council Special Notices for listed individuals and entities.[75]

## D. Regional meetings with intelligence and security services

89. In addition, the Team has established an extensive engagement between the Committee and security and intelligence services around the world. It has convened 10 meetings for heads and deputy heads of intelligence and security services from North Africa, the Middle East and Pakistan, and 5 for services in East Africa and the Gulf to discuss the situation in East Africa. It has also held three regional meetings for services in South-East Asia. The team has also participated in five annual meetings for special services, security agencies and law enforcement organizations convened by the Federal Security Service of the Russian Federation, two meetings of intelligence and security services in West Africa and all annual meetings of the Aspen Security Forum.

90. The value of these meetings lies in the interaction it allows between the operational world of counter-terrorism and the norm-setting environment of the Security Council. The activities of these two groups do not often lead to dialogue between them and so they have little natural opportunity to encourage awareness or understanding of each other's challenges and opportunities. The Team has been able to enhance the work of both sectors through this exchange.

## E. Cooperation with the Counter-Terrorism Committee and the 1540 (2004) Committee

91. The three expert groups have participated together in 12 workshops and the Team has made 21 joint country visits with Counter-Terrorism Committee Executive Directorate experts and two trips with the experts who support the Committee established pursuant to resolution 1540 (2004). The Team has coordinated its travel plans with the Executive Directorate and with the 1540 (2004) group of experts and has exchanged information prior to and after trips. The three expert groups hold occasional town hall meetings to exchange views and discuss how to improve coordination within their respective mandates. The Team has also promoted contact and cooperation with other expert groups appointed to support committees of the Security Council.[76]

92. This joint work, useful in any case, fulfils a request by the Security Council to coordinate activity and avoid duplication. What it has led to is a far clearer demarcation between the areas of activity most suited to the Monitoring Team and

[75] The INTERPOL public website (http://interpol.int/UN) groups these Al-Qaida notices together with entries for listed Taliban individuals, and it may, in due course, add individuals listed under resolution 1521 (2003) concerning Liberia.

[76] Including two meetings with the Panels of Experts assisting the Security Council Committees established under resolutions 1718 (2006) on the Democratic People's Republic of Korea and 1737 (2006) on the Islamic Republic of Iran to discuss a consistent approach to assisting Member States with the implementation of the Security Council assets freeze measures under the FATF Revised Recommendations 5, 6 and 7.

the areas of activity best suited to the other expert groups. The groups see more benefit in pursuing separate activities and keeping each other informed, than in trying to combine their different mandates in unnatural joint initiatives. The exception to this is the training courses for counter-terrorism officials, which the groups conduct jointly, in particular on assets freezing and other aspects of the various mandatory resolutions adopted by the Council.

## F. Cooperation with the Counter-Terrorism Implementation Task Force

93. The Team has a serious approach to its role within the Counter-Terrorism Implementation Task Force as one of the only three United Nations bodies that deal with terrorism on a regular basis.[77] The Team is active within various working groups and in promoting individual projects, taking the lead on issues related to countering the appeal of terrorism in the context of the United Nations Global Strategy, and seeking ways to promote capacity-building. It is also co-chair of the Working Group on Countering the Use of the Internet for Terrorist Purposes. In addition, it is an active member of the working groups covering terrorist financing, human rights while countering terrorism and border management, and actively participates as a member of the Counter-Terrorism Implementation Task Force in the activities of the Global Counter-Terrorism Forum.

[77] Along with the Counter-Terrorism Committee Executive Directorate and the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime.

# Annex I

## Litigation relating to individuals on the Al-Qaida Sanctions List

1. The legal challenges involving individuals and entities on the Al-Qaida Sanctions List known to the Team to be pending or recently concluded are described below.

### European Union

2. The European Commission has appealed jointly with a member country of the European Union against the decision regarding Yasin Abdullah Ezzedine Qadi taken by the Court of Justice of the European Union in September 2010,[a] which ordered the annulment of the sanctions against Qadi, adopting a "full and rigorous"[b] standard of judicial review. The European Court of Justice held a hearing on the appeal on 16 October 2012. The appeal remains pending even though Qadi was delisted by the Al-Qaida Sanctions Committee on 5 October 2012.

3. The General Court stayed the proceedings brought by Sanabel Relief Agency Limited (QE.S.124.06), among others, pending this ruling.[c]

### Pakistan

4. The action brought by the Al Rashid Trust (QE.A.5.01) against the application of the sanctions measures against it remains pending in the Supreme Court of Pakistan on appeal by the Government from an adverse decision of 2003.[d] The similar challenge brought by Al-Akhtar Trust International (QE.A.121.05) remains pending before a lower court.[e]

### United Kingdom of Great Britain and Northern Ireland

5. The United Kingdom is currently defending a judicial review challenge to its decision-making with regard to the designation under the Al-Qaida sanctions regime of Hani al-Sayyid al-Sebai Yusif (QI.A.198.05), who resides in the United Kingdom.[f]

### United States of America

6. On 23 September 2011, the United States Court of Appeals for the Ninth Circuit issued a decision upholding the designation of Al-Haramain Foundation (United States of America) (QE.A.117.04) on the merits and finding that, while

[a] Judgements of the Court of Justice of the European Union (http://curia.europa.eu), case T-85/09, *Kadi v. Commission*, 30 September 2010.

[b] Ibid., *Kadi v. Commission*, para. 151.

[c] Ibid., case T-134/11, *Al-Faqih and Others v. Commission*.

[d] Information provided by Pakistan.

[e] Information provided by Pakistan.

[f] Information provided by the United Kingdom.

aspects of the process afforded to the Foundation violated its Fifth Amendment right to due process, these violations were a harmless error.[g] The Ninth Circuit did, however, find that the failure to obtain a judicial warrant prior to the designation violated the Fourth Amendment and remanded the case to the district court to consider what remedy, if any, was appropriate. On 14 December 2011, the Government petitioned the Ninth Circuit for a rehearing. On 27 February 2012, the Ninth Circuit denied the rehearing petition and revised its opinion to clarify the Fourth Amendment holding. Briefing on remand is currently in process in the district court.

7. On 19 March 2012, the United States District Court for the District of Columbia held that Yasin Qadi's listing in the United States was "amply supported" by both classified and unclassified materials demonstrating his support for, among others, persons tied to Al-Qaida and related groups and activities. The Court found that Qadi had supported Al-Qaida figures, including Wa'el Julaidan (QI.J.79.02), with benefits and over $1 million in funds. The Court also rejected Qadi's constitutional claims.[h] Qadi appealed the District Court's decision to the United States Court of Appeals for the District of Columbia Circuit, but voluntarily dismissed the appeal on 31 July 2012.

## Cases involving individuals whose names the Committee has now removed from the List

### European Union

8. The General Court of the European Union stayed the proceedings[i] brought by Saad Rashed Mohammad Al-Faqih and Movement for Reform in Arabia[j] pending the final ruling of the Court of Justice of the European Union in the Qadi case.

### European Court of Human Rights

9. The case brought by Youssef Mustapha Nada Ebada in the European Court of Human Rights was decided by the Grand Chamber on 12 September 2012.[k] The European Court decided the case in favour of Nada on generally the same basis as the European Court of Justice's Qadi decision, finding that Nada had been denied by Swiss authorities an appropriate mechanism to contest the application of sanctions to him, and that Swiss authorities "should have persuaded the Court that it had taken — or at least attempted to take — all possible measures to adapt the sanctions regime to the applicant's individual situation" (para. 196).

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[g] *Al Haramain Islamic v. United States Department of Treasury*, No. 10-35032 (23 September 2011) (available at www.ca9.uscourts.gov/datastore/opinions/2011/09/23/10-35032.pdf).

[h] *Kadi v. Geithner*, No. 09-0108, memorandum opinion (United States District Court for the District of Columbia, 19 March 2012) (available at http://docs.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2009cv00108/134774/56/0.pdf?1332242198).

[i] Judgements of the Court of Justice of the European Union (at http://curia.europa.eu), case T-322/09, *Al-Faqih and MIRA v. Council and Commission*.

[j] Delisted on 2 July 2012.

[k] Judgement of the Grand Chamber of the European Court of Human Rights of 12 September 2012 in case *Nada v. Switzerland* (No. 10593/08) (available at www.echr.coe.int).

# Annex II

## New challenges to combating terrorist financing: mobile banking

1. Mobile banking is a fairly recent phenomenon that has transformed the financial services landscape in over 60 countries around the globe. An early study in 2009[a] revealed that, worldwide, approximately 4 billion people do not have access to formal financial services. Interestingly, 1 billion people do not have a bank account but have a mobile phone. The study further estimated that by 2012, 364 million unbanked people with low income will use mobile money, generating $7.8 billion in new revenue for the mobile money industry.

2. In 2006,[b] there were only 10 mobile money ventures globally; this increased to 38 in 2010 and currently there are over 140[c] ventures operating in 65[d] countries across the globe. For example in Kenya,[e] where the use of mobile banking appears to be most successful, mobile financial services started in 2007 and as at 31 December 2011 had over 19.2 million customers and had transferred 118.4 million Kenyan shillings through 41.42 million transactions in that month alone. In Pakistan,[f] over 400,000 mobile banking accounts have been opened and more than 10 million financial transactions took place over the first year and a half of operation. According to figures published in 2010,[g] in the Philippines there were 3.7 million active users of the mobile platforms to store money electronically and send it as a remittance or as a payment for bills. In Bangladesh,[h] as of March 2012, there were around 500,000 mobile accounts and more than 9,000 agents with cumulative transactions amounting to $25.9 million. In Afghanistan,[i] over 500 policemen receive their wages through the mobile banking network. The United Republic of Tanzania accepts tax payments by mobile-money services, and in some countries mobile banking is used to deliver welfare or aid payments. Although international mobile remittances are available in some countries, cross-border mobile remittances, as compared to domestic remittances, have attracted little interest so far.[j]

3. The success of mobile banking in facilitating access to financial services and in promoting financial integrity by bringing more transactions into formal channels

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[a] "Window on the Unbanked: Mobile Money in the Philippines", Consultative Group to Assist the Poor (CGAP) Brief (December 2009).

[b] "Mobile banking and financial inclusion: the regulatory lessons" (Policy Research working paper 5664, World Bank, May 2011), p. 2.

[c] http://www.cgap.org/topics/mobile-banking.

[d] http://www.mobilemoneylive.org/money-tracker.

[e] http://www.centralbank.go.ke/index.php/presentations.

[f] Deputy Governor, State Bank of Pakistan, addressing the Fourth International Mobile Commerce Conference, March 2011.

[g] CGAP, "Notes on Regulation of Branchless Banking in the Philippines", January 2010, p. 5.

[h] "The Growth of Mobile Financial Services in Bangladesh" (http://www.cgap.org/blog/growth-mobile-financial-services-bangladesh).

[i] United Nations Development Programme (UNDP), "Project in Spotlight: Law and Order Trust Fund" (http://www.undp.org.af/Publications/projectinspotlight/Project%20in%20Spotlight%20--%20LOTFA.pdf).

[j] CGAP, "Landscape study in international remittances through mobile money" (http://www.cgap.org/blog/lessons-pioneer-mobile-international-remittances-philippines; http://www.slideshare.net/CGAP/cgap-landscape-study-on-international-remittances-through-mobile-2012).

cannot be denied. However, with the marked increase in the use of mobile banking globally, the possibility that mobile banking services could be abused for terrorist financing purposes is likely to rise. In fact, one of the financiers of Al-Shabaab, Jim'ale Ali Ahmed Nur (formerly listed on the Al-Qaida Sanctions List), who is listed by the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, is believed to have established ZAAD, a mobile-to-mobile money transfer business and struck a deal with Al-Shabaab to make money transfers more anonymous by eliminating the need to show identification.[k] It is still too early to assess the full dimension of the threat, but some of the risks appear in a 2011 World Bank study,[l] and are discussed below.

4. Different types of mobile banking business models have emerged in different operational environments. In general, for maximum outreach, mobile banking must offer easy channels to convert cash to electronic value and vice versa. Retail outlets are therefore a key component in most mobile banking business models. In Kenya for example, as at February 2012, mobile financial services were offered through a network of 50,000 agents, including shops, petrol stations and pharmacies spread across the country.[m] In Brazil, where almost any retail establishment can serve as an agent, there were more than 95,000 agents operating nationwide as at January 2008.[n]

5. The use of retail outlets poses particular challenges for the purpose of combating the financing of terrorism. Retail agents are non-traditional players in the financial services sector and are therefore not subject to obligations to take part in activities to combat terrorist financing in the day-to-day conduct of their businesses. Without adequate education and awareness of the issue, retail outlets may be abused for terrorist financing purposes or to facilitate the flow of funds to listed individuals and entities. The Al-Qaida Sanctions List is not distributed to retail outlets, and even if it did reach them, they do not have systems or procedures in place to check potential customers against it. Research has shown that, for the time being, authorities and providers are struggling with questions regarding the regulation, supervision and licensing of retail outlets.[l] There are concerns at the risk of terrorist financing in areas where terrorist activity is prevalent and where the use of mobile banking is becoming increasingly popular, especially in conflict zones where supervision and monitoring is almost impossible to implement.

6. Although mobile banking transactions are electronic, and thus leave a trail, certain cultural practices could obscure this. For instance, phone pooling is a very common practice in rural villages throughout Africa and Asia.[l] The local community appoints a responsible person to manage a mobile phone that is shared among those in the village. Where registration is required, the phone will be registered under the name of the responsible person, thus shrouding the identity of the other users. Terrorist financing risks can also arise where a registered user renounces his or her phone (with or without coercion) or where the phone is stolen for terrorist financing purposes. In some countries, such abuse has already been seen among criminal organizations involved in drug trafficking. There are further risks that terrorists may

[k] http://www.un.org/sc/committees/751/pdf/1844_cons_list.pdf.

[l] *Protecting Mobile Money against Financial Crimes*, World Bank, Washington, D.C., 2011.

[m] Presentation of the Central Bank of Kenya (http://www.centralbank.go.ke/index.php/presentations).

[n] "Regulating Transformational Branchless Banking: Mobile Phones and Other Technology to Increase Access to Finance", CGAP, Focus Note No. 43, January 2008, p. 9.

gain access to mobile banking services using false names or may be allowed access without disclosing their identity.

7. It is also possible to open multiple accounts to hide the total value of deposits. Given current approaches to detecting suspicious transactions,[o] identifying the patterns of suspicious activity amid thousands of low-value transfers would be challenging.[p] Moreover, there is no evidence that mobile network operators have integrated a monitoring mechanism into their information systems to flag individuals or entities on the Al-Qaida Sanctions List.

8. The terrorist financing risks stemming from the use of mobile banking can be mitigated by applying countermeasures commensurate with the risks. FATF Revised Recommendation 15[q] sets out the requirement for countries and financial institutions to assess the terrorist financing risks that may arise from the use of new technologies prior to their introduction. After identifying the risks, financial institutions should take appropriate measures to manage and mitigate them. Unfortunately, in a number of countries where mobile banking is widely used no such risk assessment exists. Notwithstanding the absence of a risk assessment, some countries have extended measures to combat terrorist financing to mobile banking service providers. These measures include licensing and supervision of the mobile network operators, customer due diligence requirements, record-keeping and obligations to report suspicious transactions. In some countries, mobile network operators are responsible for providing training on the issue to their retail outlets. In most if not all countries, there is a cap on the value of financial transactions over the mobile network.

[o] Old FATF Recommendation 11, among other things, required financial institutions to pay special attention to all unusually large transactions.

[p] Regulators in a number of countries have imposed limits on transaction amounts through mobile banking. For example, in Kenya the limit is $420, in Bangladesh the limit is 10,000 taka (approximately $122) per day and 25,000 taka (approximately $300) per month. In the Philippines the daily transaction limit is 40,000 Philippine pesos (approximately $975).

[q] Previously FATF Recommendation 8.

# Annex III

## Changes in the Al-Qaida sanctions regime since 2004

### Procedural changes 2004-2012

1. Since the adoption of its resolution 1267 (1999), the Security Council has developed the Al-Qaida sanctions regime through a further 11 resolutions. The three sanctions measures themselves have remained unchanged since January 2002 (resolution 1390 (2002)), although the attendant procedures have developed considerably. In response to a Monitoring Team recommendation that, in addition to the money, movement and munitions of listed parties, the Committee should also try to target their ability to communicate, the Council has regularly reminded States, since 2006 (resolution 1735 (2006)), that the assets freeze also applies to the provision of Internet hosting or related services, but it has found no way to oblige States to take down websites that support listed parties. In the same resolution and subsequently, the Council has drawn attention to the financing of listed parties through the drug trade, and from the adoption of resolution 1822 (2008) it has similarly mentioned credit fraud. Since the adoption of resolution 1904 (2009), the Council has drawn attention to kidnapping for ransom by listed parties as another source of funds that should be frozen, but it has not been able to agree on a way to prohibit the payment of ransom.

2. One of the first changes to the regime came with the adoption of resolution 1452 (2002), later amended by resolution 1735 (2006), which allowed exemptions to the assets freeze. Subsequently the Security Council, in both resolutions 1904 (2009) and 1989 (2011), recognized that the exemption procedure needed an overhaul, although it has not yet agreed upon a way to proceed. A system of exemptions to the travel ban has existed since it was introduced by resolution 1390 (2002). In addition, the Committee has decided in its guidelines that all travel ban exemptions granted will be published on its website for the information of and use by Member States.

3. As far as violations are concerned, the Security Council appears to have weakened its language over the years. Having first directed Member States to punish violations, since 2004 (resolution 1526 (2004)), the Council has told States only to ensure that they have adequate procedures to ensure implementation. In 2006, the task of ensuring compliance switched from States to the Committee (resolution 1735 (2006)), although still with assistance from the Team, as introduced by resolution 1617 (2005). For a brief period the Committee asked the Team to prepare reports on possible incidents of non-compliance by States, but these reports rarely, if ever, led to action, and the initiative came to an end.

4. The Security Council's softer line with Member States coincided with an effort to engage them more directly. Since 2004 (resolution 1526 (2004)), the Council has encouraged States to meet the Committee, although only 11 have done so, and none since 2010. The Team has suggested that the Committee could take the initiative by inviting specific States to attend a meeting to discuss, for example, a particular issue of implementation or the threat in a particular region, but so far the Committee has not seen value in this.

5. Furthermore, efforts to engage States by requesting written reports have not borne much fruit. While many States (160) eventually responded to the request of the Security Council, in its resolution 1455 (2003), that they provide details of their implementation of the measures, few (62) have offered a completed checklist as

requested by the Council in resolution 1617 (2005). The Team pointed out that States had little incentive to spend time on such tasks and the Council agreed that reporting fatigue had become an issue across the board. Since the adoption of resolution 1455 (2003), the Council has maintained a request to the Committee Chair to visit States, as a way to enhance implementation and has otherwise relied on the Team to spread the message. Since the adoption of resolution 1617 (2005), there have been other initiatives to encourage the engagement of Member States including a regular schedule of oral briefings to them by the Chair, but the set intervals became longer, and, in 2011 (resolution (1989)), the Council decided that the decision on their frequency would be left up to the Chair of the Committee.

6. The biggest and most significant area of change over the years has been in improving the fairness of the regime. These changes had small beginnings. In 2004, by Security Council resolution 1526 (2004), the Committee encouraged Member States to notify individuals and entities of their listing and of the exemptions allowed under resolution 1452 (2002). Encouragement has evolved into a clearer directive, and States are now required to take all possible measures to notify the newly listed. The involvement of the Ombudsperson in a parallel process means that in all cases since 2009 a concerted effort has been made to notify newly listed parties not just of their listing, but also of the procedures for exemptions and the role of the Ombudsperson.

7. The Security Council has also made it easier for listed parties to know why the Committee has added their name to the List. Since 2005, by Security Council resolution 1617 (2005), submitting States have had to identify how any proposed individual or entity matches the designation criteria, and since the adoption of resolution 1735 (2006), States have also had to say what part of their statements may be publically released. As an annex to the same resolution, the Committee provided a cover sheet for States to ensure clarity and consistency in listing submissions. Since the adoption of resolution 1822 (2008), the Committee began to use these statements of case to draft narrative summaries of reasons for listing for all names, prepared by the Team, which it now posts on its website in all official languages.

8. In order to minimize the risk that unintended persons are subjected to sanctions as a result of indistinct entries on the List, the Security Council and Committee have made great efforts to improve the quality of the List. Since the adoption of resolution 1455 (2003), the Council has encouraged States to provide more detail on the listed names, and in its resolution 1735 (2006) it mentioned explicitly the risk of mistaken identity. By its resolution 1904 (2009), the Council asked the Team to circulate annually a list of names that lacked identifiers so that the Committee could consider delisting them, and, 18 months later, by its resolution 1989 (2011), shortened the interval to six months.

9. In its resolution 1735 (2006), the Security Council also encouraged the removal of names that no longer met the listing criteria. That initiative was expanded by resolution 1822 (2008) to include a proactive review of all listings against this standard, and, by resolution 1904 (2009), the requirement to remove the names of dead people and, by resolution 1989 (2011), defunct entities, was also added. As the importance of removing such names grew, the Committee began to put pressure on members of the Committee that objected to a delisting without explanation, first by resolution 1904 (2009), and then by resolution 1989 (2011), making it difficult for them to object by allowing the designating State the power to decide a delisting unless the entire Committee disagreed or the Security Council voted against it.

10. The Ombudsperson mechanism began as a focal point, introduced by the Security Council in its resolution 1730 (2006) in response to a recommendation by the Team, and designed to provide a way for listed individuals or entities to ask the Committee to remove their names without having to go through a Member State. On a further suggestion by the Team, the Council, in its resolution 1904 (2009), introduced the Office of the Ombudsperson, which was mandated to review delisting requests and to make observations on the case. In resolution 1989 (2011) the Council reformulated the mechanism into a quasi independent review panel by allowing the Ombudsperson to make recommendations that would have the power of decisions unless overturned by consensus in the Committee or a vote by the Security Council.

## Listing and delisting statistics

11. As at 31 October 2012, there were 306 names on the Al-Qaida Sanctions List: 238 individuals and 68 entities. Since the list began in 2001, the Committee has removed 137 Al-Qaida names, 74 individuals and 63 entities, and has merged two entries. The number of names on the List peaked in 2009 when there were 371 names in the Al-Qaida sections. The List has never been very long.

12. The list started with 124 names in the Al-Qaida sections, 56 of which were of individuals, and grew rapidly with 54 names added in 2002 and 77 in 2003. However, 111 of these early listings no longer appear, some having died and some having changed their behaviour. The pace of listing and delisting subsequently slowed, with 44 new names in 2004, 31 in 2005 and 24 in 2006, of which, overall, 21 were subsequently removed. The average annual addition since then, including 2012, is a little under 15, with only 5 of the 88 names subsequently removed. The delistings have shown a reverse trend to the listings, with few in the early years but many more from 2010 (29 names) through 2011 (26 names) to 2012 (43 names).[a]

13. The increase in delistings was a direct result of the adoption by the Security Council of new procedures. In its resolution 1822 (2008), the Council introduced a comprehensive review of all names on the List as at 30 June 2008, and by the conclusion of the review the Committee had removed 35 Al-Qaida names. The Committee has also reviewed at set intervals entries for individuals that the Team believes to be dead and entities that it believes defunct, and this has resulted in the Committee removing a further 26 names. The Committee has undertaken to examine all listings at least once every three years since the adoption of resolution 1822 (2008).

14. The Committee has removed the names of 18 individuals and 24 entities following an examination of the case by the Ombudsperson mechanism created by Security Council resolution 1904 (2009), and 13 at the request of the designating State under the procedures introduced by resolution 1989 (2011).[b] These delistings, together with the procedural changes that lie behind them, have given the List a sharper focus and improved the quality of its entries.

[a] As at 31 October 2012.

[b] As at 31 October 2012.